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# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 247

SOUTHERN PACIFIC COMPANY,  
PLAINTIFF IN ERROR.

THE COMMISSIONERS OF CUSTOMS  
ON PETITION OF  
GEORGE H. ALEXANDER, HENRI L. DUBOIS,  
AND J. W. GARRARD, DEFENDANTS.

IN REPLY TO THE ORDER OF APPEAL OF THE  
BOARD OF CUSTOMS.

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Filed April 7, 1910.

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910. °

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SOUTHERN PACIFIC COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY ON RELATION OF  
GEORGE H. ALEXANDER, HOLLAND L. ANDERSON,  
AND J. W. CASSADAY, REVENUE AGENTS.

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In Error to the Court of Appeals of the State of Kentucky.

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THE COMMONWEALTH OF KENTUCKY. }  
THE COURT OF APPEALS. }

Pleas before the Honorable The Court of Appeals of Kentucky,  
at the Capitol, at Frankfort, on the dates hereinafter mentioned.

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## Court of Appeals of Kentucky.

APRIL TERM, 1909.

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COMMONWEALTH OF KENTUCKY,

By, &c., . . . . . *Appellant,*

VERSUS

SOUTHERN PACIFIC COMPANY, . . . *Appellee.*

---

APPEAL FROM JEFFERSON CIRCUIT COURT,  
CHANCERY BRANCH, FIRST DIVISION.

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### TRANSCRIPT OF RECORD.

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Suits filed in Jefferson County Court for omitted  
property for 1907 and 1908.

Judgment of Jefferson Circuit Court appealed  
from rendered February 27, 1909. Page 397.



## COURT OF APPEALS OF KENTUCKY.

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COMMONWEALTH OF KENTUCKY, BY H. L.

ANDERSON, REVENUE AGENT, ETC., - - - *Appellant,*

*vs.*

STATEMENT.

SOUTHERN PACIFIC COMPANY, - - - - - *Appellee.*

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The Appellants prosecuting this appeal are the Commonwealth of Kentucky and Jefferson County. The Appellee is the Southern Pacific Company.

The judgment appealed from was rendered by the Jefferson Circuit Court on the 27th day of February, 1909, and is found on page 231 of the record. (Page 397, printed record.)

No summons or warning order is desired.

Humphrey, Davie & Humphrey of Louisville, Kentucky are counsel for Appellee.

COMMONWEALTH OF KENTUCKY, ETC,

By M. J. Holt,

*Attorney for Appellant.*

(Filed in office of Clerk of Court of Appeals, March 10, 1909.)

STATE OF KENTUCKY }  
 COUNTY OF JEFFERSON }

No. 53444

Pleas before His Honor, Shackelford Miller, Judge of the  
 Jefferson Circuit Court, Chancery Branch, First  
 Division, at the Court House in the City of Louis-  
 ville, County and State aforementioned and on dates  
 hereinafter mentioned.

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THE COMMONWEALTH OF KENTUCKY, BY ETC., - *Plaintiff*,

*vs.*

TRANSCRIPT OF RECORD.

THE SOUTHERN PACIFIC COMPANY, - - - *Defendant*,

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BE IT REMEMBERED, That, heretofore, to-wit, on  
 the 5th day of December, 1908, the following transcript  
 of judgment was filed by the plaintiff.

### JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, BY ETC., - - *Plaintiff*,

*vs.*

No. 2467.

SOUTHERN PACIFIC COMPANY, - - - *Defendant*.

COMMONWEALTH OF KENTUCKY, BY ETC., - - *Plaintiff*,

*vs.*

No. 3766.

SOUTHERN PACIFIC COMPANY, - - - *Defendant*.

## JUDGMENT.

The two above-entitled causes coming on to be heard and having been heard together upon the pleadings, exhibits and proof, and the court being advised, delivers a written opinion herein, which is ordered to be filed. Pursuant thereto it is now ordered and adjudged:

1. That the defendant, the Southern Pacific Company, for the year 1907 (that is, as of September 1, 1906), omitted to list and was not assessed for taxation for State and County purposes on the following personal property having a taxable situs in Jefferson County, Kentucky, to-wit:

Steamships Chalmette, Excelsior, El Dorado, El Paso, El Monte, El Mar, El Sud, El Norte, El Rio, El Cid, Comus, Proteus, El Valle, El Dia, El Siglo, El Alba, El Amigo; Tug Confidence and 28 barges; Barge El Toro; all of the fair cash value of \$5,111,572; at which the same are now assessed for taxation for State and county purposes as of September 1, 1906, making the State taxes thereon at the rate of 50 cents on the hundred dollars, the sum of \$25,557.86; and the taxes of the county of Jefferson at the rate of 32 cents on the hundred dollars, \$16,357.03.

2. That for the year 1908 (that is, as of September 1, 1907) the defendant, Southern Pacific Company, omitted to list and was not assessed for taxation for State and county purposes on the following personal property having a taxable situs in Jefferson County, Kentucky, to-wit:

The steamships above named, and in addition thereto the steamers Momus, Antilles, Creole; Tugs El Chico and El Toro and Barges Cyclops, Penates and Minerva, in

addition to the other tugs and barges above named; all of the fair cash value of \$8,115,643; at which same are now assessed for taxation for State and county purposes as of September 1, 1907, making the State taxes thereon, at the rate of 50 cents on the one hundred dollars, \$40,578.22 and the taxes of Jefferson County, at the rate of 26 cents on the hundred dollars, \$21,100.67.

3. The clerk of this court is ordered and directed to certify said assessment for said two years to the Auditor of Public Accounts of the Commonwealth of Kentucky and the Sheriff of Jefferson County. The Sheriff is directed to collect the taxes thereon, together with the costs and a penalty of 20 per cent on each amount, as other taxes are collected, by him, and to pay the penalty of 20 per cent for the year 1907 to M. J. Holt, Attorney of Record for George H. Alexander, four-fifths and Holland L. Anderson one-fifth; to to pay the penalty for the year 1908 to M. J. Holt, Attorney of Record for Holland L. Anderson and J. W. Cassaday, the penalty for the year 1908 to be equally divided between Holland L. Anderson and J. W. Cassaday.

4. It is further adjudged that no other property was omitted by the defendant from assessment for either of said years.

The County Attorney, Joseph Selligman, was present and assisted in the prosecution of this case, both in the preparation and at the final hearing.

ARTHUR PETER,

*Judge of the Jefferson County Court.*

Seen, JOSEPH SELLIGMAN,

*County Attorney.*

HUMPHREY, DAVIE & HUMPHREY,

*For Defendant.*

M. J. HOLT,

*For Plaintiff.*

Clerk's costs .....\$17.10      Sheriff's costs .....\$1.20  
 To Depositions (M. J. Holt)..... 6.00

In testimony whereof, and that the foregoing judgment is truly and completely copied from the records of the court aforesaid, I, Mark H. Gabhart, Clerk of said court hereunto set my hand this 19th day of November, 1908, the foregoing judgment having been entered in the County Court on the 18th day of November, 1908.

MARK H. GABHART,  
*Clerk Jefferson County Court.*

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Thereupon on the 5th day of December, 1908, the Clerk issued supersedeas and copy, which said supersedeas is as follows, to-wit:

#### JEFFERSON CIRCUIT COURT.

*To Hon. Arthur Peter, Judge Jefferson County Court of Jefferson County, in the State of Kentucky:*

You are hereby enjoined from all proceedings on a judgment rendered in favor of Southern Pacific Company in the following cases: 2467 and 3766 against Commonwealth of Kentucky, by etc., from a judgment rendered on 18th day of November, 1908, and \$24.30 costs, the said Commonwealth of Kentucky, by etc., having appealed to the Jefferson Circuit Court, according to law, in my office as Clerk of said court, and you are hereby required to return the papers to said office.

Witness W. L. Weller, Jr., Clerk of said court, this 5th day of December, 1908.

W. L. WELLER, JR., *Clerk.*  
 By R. KALTENBACHER, D. C.

The return of the sheriff on the foregoing supersedeas is as follows, to-wit:

Came to hand Dec. 5, 1908, at 12:05 p. m.

Executed December 7, 1908, on Hon. Arthur Peter, Judge Jefferson County Court, by delivering to him a copy of the within supersedeas.

CHAS. L. SCHOLL, *S. J. C.*  
By HITE W. LAVIELLE, *D. C.*

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Thereupon on the 5th day of December, 1908, the Clerk issued summons and copy, which said summons is as follows, to-wit:

### THE COMMONWEALTH OF KENTUCKY.

*To the Sheriff of Jefferson County, Greeting:*

We command you to summon Southern Pacific Company in the following cases: 2467 and 3766, to appear before the Judge of the Jefferson Circuit Court in twenty days from service hereof, to answer an appeal taken to said court by the Commonwealth of Kentucky, by etc., from a judgment rendered in favor of the Southern Pacific Company by Hon. Arthur Peter, Judge of the Jefferson County Court for said county from judgment rendered on November 18, 1908, and \$24.30 costs.

Witness W. L. Weller, Clerk of said court this 5th day of December, 1908.

W. L. WELLER, JR., *Clerk.*  
By R. KALTENBACHER, *D. C.*

The return of the sheriff on the foregoing summons is as follows, to-wit:

Came to hand December 5, 1908, at 12:05 p. m.

Executed December 7, 1908, on Southern Pacific Company by delivering a copy of the within summons to J. B. Weaver, Agent of said company, he being chief officer found in this county at this time.

CHAS. L. SCHOLL, S. J. C.

By HENRY YOUNG, D. S.

Thereupon on the 7th day of December, 1908, the following original papers were received from the Clerk of the Jefferson County Court and filed in the office of the Clerk of the Jefferson Circuit Court.-

The date preceding each paper indicates the day on which the same was entered or filed in the Jefferson County Court:

Filed in County Court February 9, 1907:

### JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY AND JEFFERSON

COUNTY BY GEORGE H. ALEXANDER, REVENUE

AGENT FOR THE STATE AT LARGE, - - - *Plaintiffs,*

*VS.*

STATEMENT.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

Plaintiffs, Commonwealth of Kentucky and Jefferson County by George H. Alexander, duly appointed, qualified and acting Revenue Agent for the State at Large, state that the defendant, Southern Pacific Company, is a corporation, organized under the laws of the State of Kentucky, in 1884, having its principal office and place of business in Jefferson County, Kentucky, and that said principal office and place of business was in Jefferson County, Kentucky, on September 1, 1906, and at all times since the date of its organization and incorporation.

Plaintiffs state that the said defendant company owns only a small amount of tracks outright, but controls through ownership of stock or by lease, a large system of railroads, extending from San Francisco to New Orleans, the entire system embracing nine thousand, two hundred and sixty miles of railroad.

Plaintiff states that on July 1, 1906, and on September 1, 1906, the said defendant company was the owner of the following property, to-wit: nine thousand, two hundred and sixty miles of railroad, steamship routes from New Orleans to New York, and other lines operated through the Pacific Mail Steamship Company and several other small corporations, amounting to sixteen thousand, one hundred and eighty miles of water route on the Atlantic and Pacific Oceans and the Gulf of Mexico. That the total amount of stocks and bonds of the various subsidiary companies owned or operated by it, aggregating three hundred and thirty millions of dollars in par value of stock, and three hundred and thirty-seven millions in par value of bonds, the fair cash value of same, estimated at the price the same would bring at a fair voluntary sale, being a very considerable sum, over four hundred and eighty million dollars. Of this stock the Southern Pacific Company and its proprietary company own three hundred and fifteen million dollars; and bonds, nineteen million dollars. Its capital stock is an authorized one hundred million dollars seven per cent non-cumulative preferred and two hundred million dollars common stock. Plaintiff states that on each of the dates above named the said defendant was the owner of the following property, deposited or hypothecated with the trust companies against issue of capital stock of Southern Pacific Company, also under mortgages of Southern Pacific Company 4 and 4½% bonds, including:

Galveston, Harrisburg & San Antonio R'y Co. Capital Stock .....	\$27,005,600 00
Louisiana Western R. R. Co. Capital Stock.....	3,310,000 00
Morgan's Louisiana & Texas R. R. & S. S. Co. Capital Stock .....	4,994,000 00
Mexican International R. R. Co. Capital Stock.....	4,164,100 00
Southern Pacific R. R. Co. (of Arizona) Capital Stock..	19,992,600 00
Southern Pacific R. R. Co. (of California) Capital Stock	96,740,133 00
Southern Pacific R. R. Co. (of New Mexico) Capital Stock .....	6,886,300 00
Texas & New Orleans R. R. Capital Stock.....	4,997,500 00
	<hr/> \$168,090,233 00

Stocks deposited with the Union Trust Company of New York City, Trustee of the Southern Pacific Company, Central Pacific Railway Company, common and preferred stock \$80,074,200.00.

Stocks and bonds deposited with Central Trust Company, New York:

Austin & Northwestern R. R. Co. Capital Stock.....	\$1,005,000 00
Carson & Colorado R. R. Co. Capital Stock.....	4,375 00
Central Texas & Northwestern R'y Co. Capital Stock..	195,000 00
Cromwell Steamship Co. Capital Stock.....	995,000 00
Fort Worth & New Orleans R'y Co. Capital Stock....	295,000 00
Galveston, Houston & Northern R'y Co. Capital Stock	198,000 00
Gila Valley, Globe & Northern R'y Co. Capital Stock..	1,197,000 00
Houston, East & West Texas R'y Co. Capital Stock...	1,905,000 00
Houston & Shreveport R'y Co. Capital Stock.....	395,000 00
Maricopa & Phoenix & Salt River Valley R. R. Co. Capital Stock .....	489,300 00
Miscellaneous Capital Stock .....	2,500,000 00
New York, Texas & Mexican R'y Co. Capital Stock..	608,000 00
Oregon & California R. R. Co. Capital Stock.....	6,945,000 00
Oregon & California R. R. Co. Capital Stock.....	11,980,000 00
Pacific Mail Steamship Co. Capital Stock.....	10,005,000 00
Southern Pacific Coast R'y Co. (of California) Capital Stock .....	5,993,000 00
Southern Pacific R. R. Co. (of California) Capital Stock .....	3,900,000 00
Southern Pacific Terminal Co. Capital Stock.....	995,500 00
Sunset R. R. Co. Capital Stock.....	248,500 00
	<hr/> \$64,124,300 00
Wells, Fargo & Co.'s Express Capital Stock.....	1,530,000 00
	<hr/> \$65,654,300 00

The defendant company owned the following railroad bonds:

Carson & Colorado Railroad Co. First Mortgage 4% bonds .....	\$2,000,000 00
Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage M. & P. Extension 6% bonds.....	1,110,000 00
Galveston, Harrisburg & San Antonio R'y Co. 6% Equipment bonds .....	1,394,000 00
Galveston, Houston & Northern R'y Co. First Mortgage 5% bonds .....	800,000 00
Gulf, Western Texas & Pacific R'y Co. First Mortgage 5% bonds .....	2,224,000 00
Houston & Shreveport R'y Co. First Mortgage 6% bonds .....	150,000 00
Houston & Texas Central R. R. Co., Lampasas Extension 5% bonds.....	425,000 00
Maricopa & Phoenix & Salt River Valley R. R. Co. First Mortgage 5% bonds .....	78,000 00
Maricopa & Phoenix R'y Co. First Mortgage 6% bonds.....	539,000 00
Sunset R. R. Co. First Mortgage 4% bonds.....	142,000 00
Texas & New Orleans R. R. Co. 6% Equipment bonds.....	1,156,000 00
Texas & New Orleans R. R. Co., Dallas Division, First Mortgage 4% bonds .....	1,190,000 00
Total bonds.....	\$11,208,000 00

It owned the following steamships: "El Alba," "El Dia," "El Siglo," and "El Valle."

It owned the following bonds and stocks unpledged:

#### SOUTHERN PACIFIC COMPANY.

Galveston, Harrisburg & San Antonio R'y Co. capital stock .....	\$48,300 00
Galveston, Harrisburg & San Antonio R'y Co. equipment 6% bonds.....	\$164,000 00
Houston & Texas Central R. R. Co. Lampasas Extension 5% bonds.....	25,000 00
Morgan's Louisiana & Texas R. R. & S. S. Co. capital stock .....	10,006,000 00
Maricopa & Phoenix & Salt River Valley R. R. Co. capital stock.....	510,700 00
R'y Matagorda Division, 6% bonds.....	842,000 00
Oregon & California R. R. First Mortgage 5% bonds .....	78,000 00

Riverside & Arlington R'y Co. First Mortgage 4% bonds-----	95,000 00	
San Bernardino & Redlands R. R. Co. capital stock (collateral) -----		200,000 00
Southern Pacific R. R. Co. (of California) capital stock -----		138,759 00
Southern Pacific Co. 4% bonds Central Pacific stock (collateral)-----	848,000 00	
Southern Pacific Terminal Co. capital stock-----		1,000,200 00
Stock in oil companies -----		1,795,694 40
Texas & New Orleans R. R. Co., Dallas Division, 4% bonds-----	64,000 00	
Texas & New Orleans R. R. Co. Equipment bonds, 6% -----	136,000 00	
Miscellaneous stocks -----		5,489,738 83
Total-----	\$2,253,000 00	

## CENTRAL PACIFIC COMPANY.

C. P. R'y First Refunding Mortgage 4%----	\$83,000 00	
C. P. R'y 3½% Mortgage bonds-----	1,150 00	
Colifax & Forest Hill Commercial Co. capital stock -----		\$4,660 00
Owned by Ogden Union R'y & Depot Co. 5% First Mortgage bonds-----	163,000 00	
Ogden Union R'y & Depot Co. capital stock-----		150,000 00
Capital stock in transportation lines-----		160,000 00
Miscellaneous stocks--Old C. P. R. R. bonds not deposited -----	1,900 00	
Total-----	\$248,150 00	

Galveston, Harrisburg & San Antonio R'y Co. miscellaneous stocks -----	\$-----	\$-----
Houston & Texas Central R. R. Co.-----	-----	-----
Capital stock Fort Worth, Union Passenger Station, capital stock Houston R'y Co.--		25,000 00

## MORGAN'S LOUISIANA &amp; TEXAS R. R. &amp; S. S. COMPANY.

Direct Navigation Co. capital stock-----		\$50,000 00
Direct Navigation Co. 5% note-----	\$100,000 00	
Gulf, Western Texas & Pacific R'y Co.--Cap. stock -----		496,500 00
Houston & Texas Central R. R. Co. 4% general mortgage bonds-----	184,000 00	
Iberia & Vermillion R. R. Co. capital stock--		298,500 00

Texas Transportation Co. 5% First Mortgage bonds .....	350,000 00	
Capital stock Citizens' Bank, New Orleans, La .....		36,000 00
Total .....	\$634,000 00	\$881,000 00

## SOUTHERN PACIFIC RAILROAD COMPANY.

## Miscellaneous Stocks.

Total proprietary companies .....	\$882,150 00
Total Southern Pacific Co. and proprietary companies ..	3,134,150 00

## FINANCIAL STATEMENT.

(Years Ended June 30.)

## Traffic and Transportation Operations—all Lines—1903-4.

Average miles of road operated .....	9,024.59
Average miles carried—all passengers .....	41.40
Average received from each passenger other than ferry—suburban .....	1.77
Average per passenger per mile other than ferry—suburban .....	2.141c
Receipts per mile of main track .....	3,195.48
Receipts per revenue train mile .....	1.63

## Freight Traffic.

Tons carried, including company's freight .....	23,684,348
Tons carried one mile .....	6,562,648.418
Tons miles per mile of road—all freight .....	727,196
Average miles hauled—all freight .....	277.09
Average received from each ton—commercial freight ..	2.92
Average per ton per mile—commercial freight .....	1.014c
Receipts per mile of main track—all freight .....	6,272.05
Receipts per revenue train mile—all freight .....	2.82
Ton miles per revenue train mile—all freight (average tons per train) .....	325.54
Ton miles per traffic mile—all freight (average tons per train) .....	275.30
Average tons per loaded car—all freight .....	19.31

## Income Account—Entire System.

Average miles operated .....	9,024
Total receipts .....	\$95,522,992
Expenses and taxes .....	65,532,347
Net .....	\$29,990,645
Charges, etc .....	20,998,568
Surplus .....	8,992,077
Betterments and additions .....	133,593
Balance .....	\$8,878,484
New equipment prop. Co.'s surplus .....	\$8,878,484

Includes interest, sinking funds, advances, accounts charged off discount on Southern Pacific  $4\frac{1}{2}\%$  bonds, insurance, depreciations, etc.

This surplus of \$8,878,484 is equal in round figures to about  $4\frac{1}{2}\%$  on Southern Pacific capital stock outstanding.

The income of the proprietary companies for the year ended June 30, 1904, compares as follows:

Gross .....	\$86,749,708
Expenses, tax, and rents .....	62,478,818
Net .....	\$24,270,890
Other income .....	2,785,475
Total income .....	\$27,056,365
Charges, etc .....	16,036,499
Surplus .....	\$11,019,866
Pay by Southern Pacific Co. ....	149,158
Total .....	\$11,169,024
Pay to Southern Pacific Co. ....	546,275
Balance to P. & L. surplus .....	\$10,622,749

Plaintiff states that the assets of the defendant company, subject to assessment for taxation on July 1, 1906, and September 1, 1906, and at all times between said dates, were and are the following:

## ASSETS.

Stocks and bonds .....	\$266,180,544
Steamships .....	3,650,702
Sinking Funds .....	444

## CURRENT ASSETS.

Bonds and stocks owned.....	\$4,548,255
Agents and conductors .....	2,528,936
Loans and bills rec.....	540,279
Cash .....	8,425,188

## CONSTRUCTION ADVANCES.

Individuals and companies.....	\$576,709
Materials, fuel, and supplies.....	8,925,474
U. S. Government .....	1,222,416
Def. assets .....	29,167,208
Proprietary companies .....	19,340,875
Discount on bonds—Con Assets.....	4,470,068
Total.....	\$349,586,163

Plaintiff states that all of the above property as herein set forth was omitted from assessment for taxation by said company for the year 1907, and that no part of same was assessed by the County Assessor of Jefferson County by the State Board of Valuation and Assessment, or any other assessing officer or Board of Jefferson County, or the State of Kentucky for the year 1907. That said property amounting to four hundred million dollars is subject to assessment for State and county purposes, in Jefferson County, the domicile of the corporation for the year 1907, upon an assessment made as of September 1, 1906.

Plaintiff states that said defendant company operates no railroad lines in the State of Kentucky; that its cars are operated by other railroad companies to points in the State of Kentucky as a destination and through the State of Kentucky, and that in the State of Kentucky, on September 1, 1906, and in Jefferson County, Kentucky, the

said defendant company had one hundred cars of the fair cash value of one thousand dollars per car, which were at points of destination, and not in transit on said date, and were subject to assessment for taxation for the year 1907; that throughout the year 1906, including September 1, 1906, the said defendant company had an average of one hundred cars per day in the State of Kentucky, of the value as herein above set forth.

Plaintiff states that by provision of the Act of 1906 Section 5, page 130, it is specifically provided—"but if any such railroad or other corporation, organized under the laws of this State have all of its lines outside of this State, the said Board shall fix the value of its entire capital stock as hereinbefore provided, and apportion to this State for taxation therein the proper proportion and not less than one per cent of its said capital stock, and the amount so apportioned shall be the value of its intangible property, including its corporate franchise, stocks, bonds, securities, and choses in action, subject to taxation in this State and in the county, city, town, and district where its principal place of business in this State may be located."

Plaintiff states that said provision was lobbied through the Legislature of the State of Kentucky, without a careful consideration on the part of the members of such legislature as to its effect as a discriminating Statute favoring the said defendant company. Plaintiff states that said section is such a discrimination in favor of said company, as to constitute an inequality of taxation from said defendant towards the plaintiffs. That the situs of all the intangible property of the defendant company is in Jefferson County, Kentucky, at the domicile of said defendant company, and that by said provision all of said intangible property, which is the chief asset of the defendant company, is in effect, exempt from

assessment for taxation for the year 1907, whereas the property of all other persons and corporations having a domicile in the State of Kentucky, is taxed.

Plaintiffs state that the portion of said act attempting to exempt the said property of the said defendant company, as herein set forth, is in contravention of Sections 172, 170, 181, 182 and other provisions of said Constitution regulating the powers of the Legislature to enact laws taxing and exempting property from assessment for taxation. That the said clause of said section is unconstitutional and void, and that the said defendant's property is subject to assessment for taxation under the general laws in force, taxing all property of citizens of this State having a situs in this State for taxation for State and county purposes.

Wherefore, plaintiffs pray that this court may hear and determine the amount, character, and value of the property omitted by the defendant company from taxation for the year 1907, and assess same against said defendant company at its fair cash value, estimated at the price same would bring at a fair voluntary sale. That said order of assessment be certified by the Clerk to the Auditor of this State, and the Sheriff of this county. That the Sheriff collect said taxes on said assessment as other taxes are collected by him, together with the costs and a penalty or fee of twenty per cent due the relator, George H. Alexander, Revenue Agent for the State at Large.

Plaintiffs ask for all other proper relief.

COMMONWEALTH OF KENTUCKY,

By Geo. H. Alexander,

*Revenue Agent for the State at Large.*

R. W. Bingham,

*County Atty. Jefferson County.*

M. J. Holt,

*Attorney.*

Thereupon on the 9th day of February, 1907, the Clerk of the Jefferson County Court, issued summons and copy, which said summons is as follows, to wit:

COMMONWEALTH OF KENTUCKY—JEFFERSON  
COUNTY COURT.

*To the Sheriff or any Constable of  
Jefferson County, Greeting:*

You are commanded to summon the Southern Pacific Company, to answer on the first day of the next regular term of the Jefferson County Court, which does not commence within five days from the service of this summons, a statement filed against it by Commonwealth of Kentucky, by George H. Alexander, Revenue Agent for the State at Large, and show cause why it should not be assessed for the years therein named, of certain personal property as fully set out and described in the Statement filed, and warn it, upon its failure to answer said statement, the allegations of same will be taken for confessed as true against him, and judgment will be rendered thereon according to law.

Given under my hand as Clerk of said Jefferson County Court, Kentucky, this 9th day of February, 1907.

W. J. SEMONIN,

*Clerk Jefferson County Court, Kentucky.*

By Jos. J. Schene, D. C.

The return of the Sheriff on the foregoing summons is as follows, to wit:

Came to hand February 19, 1907, at 12:45 P. M.

Executed February 26, 1907 on the Southern Pacific Company by delivering a copy of the within summons to J. B. Weaver, Asst. Secy. of said company, he being chief officer found in this county at this time.

H. A. BELL, S. J. C.

By J. H. Moore, D. S.

Entered in Jefferson County Court, April 30, 1907:

JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, BY GEORGE  
H. ALEXANDER, REVENUE AGENT FOR THE  
STATE AT LARGE, - - - - - *Plaintiff,*  
*vs.* ORDER.

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant.*

This cause coming on for hearing upon the motion of defendant, Southern Pacific Company to require the Commonwealth of Kentucky to elect whether it will proceed with the prosecution of this suit or the suit filed February 26, 1907, in this court by said Commonwealth, by D. L. Hardesty, Revenue Agent or the suit filed by the Commonwealth of Kentucky in the Franklin Circuit Court on February 26, 1907, by R. C. Hieatt, Sheriff of Franklin County and N. B. Hays, Attorney General, and the court being advised, overrules said motion to elect, to which the defendant objects and excepts.

This cause also having been heard upon the demurrer of the plaintiff to the defendant's plea in abatement filed on April 1, 1907, and the court being advised, sustains plaintiff's demurrer to said plea to which the defendant objects and excepts.

Counsel for plaintiff herein having filed its motion to have noted of record the defendant Hon. N. B. Hays, Attorney General as counsel herein, and the court, at the suggestion of said Attorney General, gives him time to elect whether he will note his name as counsel of record.

CHAS. A. WILSON, *Judge.*

Seen M. J. Holt, for Plaintiff.

Seen H. & H., for S. P. Co.

J. Smith Hayes, etc.

Filed in Jefferson County Court, April 30, 1907:

JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, BY GEORGE  
H. ALEXANDER, REVENUE AGENT FOR THE  
STATE AT LARGE, - - - - - *Plaintiff,*

*vs.* STATEMENT OF N. B. HAYS,  
ATTORNEY GENERAL.

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant.*

The counsel for George H. Alexander, deceased, M. J. Holt, Esqr., having filed a request in the above proceeding that the undersigned be noted of record as counsel herein, and the court having indicated a willingness so to order, if the undersigned so desired, he desires to state that with due deference and respect to the rulings of the court herein and in case 2657 of Commonwealth of Kentucky against Southern Pacific Company, dismissing and abating No. 2657, he believes His Honor has erred, and so believing, he considers it his duty first to prosecute and appeal in case No. 2657 in order to determine the questions presented. If he should be mistaken in this, he will then appear as counsel for the Commonwealth in case No. 2467 and willingly and readily assist in the prosecution of said action.

N. B. HAYS,  
*Attorney General.*

Filed in Jefferson County Court, April 30, 1907:

JEFFERSON CIRCUIT COURT.

COMMONWEALTH OF KENTUCKY, BY GEORGE  
H. ALEXANDER, REVENUE AGENT FOR THE  
STATE AT LARGE, - - - - - *Plaintiff,*

*vs.*

DEMURRER.

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant.*

Now comes plaintiff, and demurs to defendant's plea in abatement filed on April 1, 1907, in this cause, because said plea fails to state facts sufficient to constitute a defense or plea in abatement to plaintiff's cause of action.

COMMONWEALTH'S ATTORNEY, BY ETC.,

R. W. Bingham,

B. F. Washer,

M. J. Holt,

*Attorney.*

Entered in the Jefferson County Court, July 1, 1907:

JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, BY GEORGE  
H. ALEXANDER, REVENUE AGENT, - - - *Plaintiff,*

*vs.*

MOTION.

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant.*

The defendant, Southern Pacific Company, moves the court to strike from the statement herein filed, the following language on the last page but one, viz:

"Plaintiff states that said provision was lobbied through the Legislature of the State of Kentucky without a careful consideration on the part of the members of said Legislature as to its effect as to a discriminating statute favoring the said defendant company."

HUMPHREY & HUMPHREY,  
*Attorneys for defendant.*

Sust.

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Filed in the Jefferson County Court, July 1, 1907:

JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, BY GEORGE  
H. ALEXANDER, REVENUE AGENT, - - - *Plaintiff,*  
*vs.* DEMURRER.  
SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

The defendant demurs to the statement filed herein because this suit is prematurely brought.

Wherefore defendant prays that the suit may be dismissed, and for all proper relief.

HUMPHREY & HUMPHREY,  
*For Defendant.*

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Filed in the Jefferson County Court, July 1, 1907:

JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, BY GEORGE  
H. ALEXANDER, REVENUE AGENT, - - - *Plaintiff,*  
*vs.* PLEA IN ABATEMENT.  
SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

The defendant, Southern Pacific Company, by way of plea in abatement, alleges that since the filing of this statement, the relator, George H. Alexander, has died, and there is no one responsible to the defendant for costs.

Wherefore, the defendant prays that this suit may be abated unless some other revenue agent shall be substituted for the said George H. Alexander who will be liable for costs.

HUMPHREY & HUMPHREY,  
*Attorneys for defendant.*

Over.

Over the filing on the back of the foregoing plea in abatement is the word "error" written in pencil.

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Filed in the Jefferson County Clerk's office, February 8, 1908:

### JEFFERSON CIRCUIT COURT.

COMMONWEALTH OF KENTUCKY AND JEFFERSON COUNTY, BY HOLLAND L. ANDERSON,  
REVENUE AGENT FOR THE STATE AT LARGE, - *Plaintiff.*

*vs.* SUPPLEMENTAL STATEMENT.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

Plaintiffs, Commonwealth of Kentucky and Jefferson County, by Holland L. Anderson, duly appointed, qualified, and acting Revenue Agent for the State at Large, state that the defendant Southern Pacific Company is a corporation organized under the laws of the State of Kentucky in 1884, having its principal office and place of business in Jefferson County, Kentucky, where it was on

September first, 1906, July first, 1906, July first, 1907, and September first, 1907, and at all times since the date of its organization and incorporation.

Plaintiff states that the said defendant company owns no track nor operates any railroad in the State of Kentucky, but controls through ownership of stock or by lease a large system of railroads extending from San Francisco to New Orleans, the entire system embracing nine thousand, two hundred and sixty miles of railroad.

Plaintiff states that on July first, 1906, on September first, 1906, on July first, 1907, and on September first, 1907, the said defendant company was the owner of the following property, to wit: controlling as above set forth nine thousand, two hundred and sixty miles of railroad, steamship routes from New Orleans to New York, and other lines operated through the Pacific Mail Steamship Company and several other small corporations, amounting to sixteen thousand, one hundred and eighty miles of water route on the Atlantic and Pacific Oceans and the Gulf of Mexico. That the total amount of stocks and bonds of the various subsidiary companies owned or operated by it, aggregating three hundred and thirty million of dollars in par value of stock, and three hundred and thirty-seven millions in par value of bonds, the fair cash value of same, estimated at the price the same would bring at a fair voluntary sale, being a very considerable sum over four hundred and eighty million dollars, of this stock the Southern Pacific Company and its proprietary company own three hundred and fifteen million dollars; and bonds, nineteen million dollars. Its capital stock is an authorized one hundred million dollars seven per cent non-cumulative preferred and two hundred million dollars common stock. Plaintiff states that on each of the dates above named, the said defendant

was the owner of the following property, deposited or hypothecated with the Trust Companies against issue of capital stock of Southern Pacific Company, also under mortgages of Southern Pacific Company 4 and 4½% bonds including:

Galveston, Harrisburg & San Antonio R'y Co. capital stock .....	\$27,005,600 00
Louisiana Western R. R. Co. capital stock.....	3,310,000 00
Morgan's Louisiana & Texas R. R. & S. S. Co. capital stock .....	4,994,000 00
Mexican International R. R. Co. capital stock.....	4,164,100 00
Southern Pacific R. R. Co. (of Arizona) capital stock..	19,992,600 00
Southern Pacific R. R. Co. (of California) capital stock..	96,740,133 00
Southern Pacific R. R. Co. (of New Mexico) capital stock .....	6,886,300 00
Texas & New Orleans R. R. Co. capital stock.....	4,997,500 00
	<hr/>
	\$168,090,233 00

Stock deposited with the Union Trust Company of New York City, Trustee of the Southern Pacific Company, Central Pacific Railway Company, common and preferred stock \$80,074,200.00.

Stock and bonds deposited with Central Trust Company, New York:

Austin & Northwestern R. R. Co. capital stock.....	\$1,005,000 00
Carson & Colorado R. R. Co. capital stock.....	4,375,000 00
Central Texas & Northwestern R'y Co. capital stock..	195,000 00
Cromwell Steamship Co. capital stock.....	995,000 00
Fort Worth & New Orleans R'y Co. capital stock....	295,000 00
Galveston, Houston & Northern R'y Co. capital stock..	198,000 00
Gila Valley, Globe & Northern R'y Co. capital stock...	1,197,000 00
Houston, East & West Texas R'y Co. capital stock....	1,905,000 00
Houston & Shreveport R'y Co. capital stock.....	395,000 00
Maricopa & Phoenix & Salt River Valley R. R. Co. capital stock .....	489,300 00
Miscellaneous capital stock.....	2,500,000 00
New York, Texas & Mexico R'y Co. capital stock.....	608,000 00
Oregon & California R. R. Co. capital stock.....	6,945,000 00
Oregon & California R. R. Co. capital stock.....	11,980,000 00
Pacific Mail Steamship Co. capital stock.....	10,005,000 00
South Pacific Coast R'y Co. (of California) capital stock .....	5,993,000 00

Southern Pacific R. R. Co. (of California) capital stock.....	3,900,000 00
Southern Pacific Terminal Co. capital stock.....	995,500 00
Sunset R. R. Co. capital stock.....	248,500 00
Total.....	\$64,124,300 00
Wells, Fargo & Co.'s Express capital stock.....	1,530,000 00
Total.....	\$65,654,300 00

The defendant company owned the following railroad bonds:

Carson & Colorado R'y Co. First Mortgage 4% bonds..	\$2,000,000 00
Galveston, Harrisburg and San Antonio R'y Co. Second Mortgage Extension 6% bonds.....	1,110,000 00
Galveston, Harrisburg & San Antonio R'y Co. 6% Equipment bonds .....	1,394,000 00
Galveston, Houston & Northern R'y Co. First Mortgage 5% bonds .....	800,000 00
Gulf, Western Texas & Pacific R'y Co. First Mortgage 5% bonds .....	2,224,000 00
Houston & Shreveport R'y Co. First Mortgage 6% bonds	150,000 00
Houston & Texas Central R. R. Co. Lampasas Extension 5% bonds .....	425,000 00
Maricopa & Phoenix & Salt River Valley R. R. Co. First Mortgage 5% bonds.....	78,000 00
Maricopa & Phoenix R'y Co. First Mortgage 6% bonds..	539,000 00
Sunset R. R. Co. First Mortgage 4% bonds.....	142,000 00
Texas & New Orleans R. R. Co. 6% Equipment bonds..	1,156,000 00
Texas & New Orleans R. R. Co., Dallas Division, First Mortgage 4% bonds .....	1,190,000 00
Total bonds.....	\$11,208,000 00

It owned the following steamships: "El Alba," "El Dia," "El Siglo," and "El Valle."

It owned the following bonds and stocks unpledged:

#### SOUTHERN PACIFIC COMPANY.

Galveston, Harrisburg & San Antonio R'y Co. capital stock.....	\$48,300 00
Galveston, Harrisburg & San Antonio R'y Co. Equipment 6% bonds.....	\$164,000 00
Houston and Texas Central R. R. Co. Lampasas Extension 5% bonds.....	25,000 00
Morgan's Louisiana & Texas R. R. & S. S. Co. capital stock.....	10,006,000 00

Maricopa & Phoenix & Salt River Valley R. R. Co. capital stock-----		510,700 00
New York, Texas & Mexican R'y, Mata- gorda Division, 6% bonds-----	842,000 00	
Oregon & California R. R. Co. First Mort- gage 5% bonds-----	78,000 00	
Riverside and Arlington R'y Co. First Mortgage 4% bonds-----	95,000 00	
San Bernardino & Redlands R. R. Co. cap- ital stock (collateral)-----		200,000 00
Southern Pacific R. R. Co. (of California) capital stock -----		138,759 00
Southern Pacific Co. 4% bonds-----		
Central Pacific stock (collateral)-----	848,000 00	
Southern Pacific Terminal Co. capital stock		1,000,200 00
Stock in oil companies, Texas & New Or- leans R. R. Co., Dallas Div., 4% bonds.	64,000 00	
Texas & New Orleans R. R. Co. Equipment 6% bonds -----	136,000 00	
Miscellaneous stocks -----		5,489,738 83
Total-----	\$2,252,000 00	\$19,189,391 83

## CENTRAL PACIFIC RAILWAY CO.

C. P. R'y First Refunding Mortgage 4%---	\$83,000 00	
C. P. R'y 3½% Mortgage bonds-----	1,150 00	
Colifax & Forest Hill Commercial Co. cap- ital stock -----		\$4,660 00
Owned by		
Ogden Union R'y & Depot Co. 5% First Mortgage bonds -----	163,000 00	
Ogden Union R'y & Depot Co. capital stock		150,000 00
Capital stock in transportation lines-----		160,000 00
Miscellaneous stocks—Old C. P. R. R. bonds not deposited-----	1,000 00	
Total-----	\$248,150 00	

## GALVESTON, HARRISBURG &amp; SAN ANTONIO R'Y CO.

Miscellaneous stocks -----	\$	\$
Houston & Texas Central R. R. Co-----		
Capital stock Fort Worth Union Passenger Station -----		25,000 00
Capital stock Houston Railway Co-----		
Total-----		

## MORGAN'S LOUISIANA &amp; TEXAS R. R. &amp; S. S. CO.

Direct Navigation Co. capital stock-----		\$50,000 00
Direct Navigation Co. 5% note-----	\$100,000 00	
Gulf, Western Texas & Pacific R'y Co. capital stock-----		496,500 00
Houston & Texas Central R. R. Co. 4% General Mortgage bonds-----	184,000 00	
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Capital stock Citizen's Bank of New Orleans, La-----		36,000 00
Total-----	\$634,000 00	\$881,000 00

## SOUTHERN PACIFIC R. R. CO.

## Miscellaneous Stocks.

Total proprietary companies-----	\$882,150 00
Total Southern Pacific Company and proprietary companies-----	3,134,150 00

## FINANCIAL STATEMENT.

(Year Ended June 30.)

## Traffic and Transportation Operations—All Lines.

Average miles of road operated-----	9,024.59
Average miles carried—all passengers-----	41.40
Average received from each passenger other than ferry—suburban-----	1.77
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Tons carried, including Company's freight-----	23,684,348
Tons carried one mile-----	6,562,648,418
Tons miles per mile of road—all freight-----	727,196
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Ton miles per revenue train mile—all freight (average tons per train) .....	325.54
Ton miles per traffic mile—all freight (average ton per train) .....	275.30
Average tons per loaded car—all freight.....	19.31

## Income Account—Entire System.

Average miles operated.....	9,024
Total receipts .....	95,522,992
Expenses and taxes .....	65,532,347
Net .....	29,990,645
Charges, etc .....	20,998,568
Surplus .....	8,992,077
Betterments and additions .....	113,593
Balance .....	8,878,484
New equipment prop. Co.'s surplus.....	8,878,484

Includes interest, sinking funds, advances, accounts charged off discount on Southern Pacific  $4\frac{1}{2}\%$  bonds, insurance depreciations, etc.

This surplus of \$8,878,484 is equal in round figures to about  $4\frac{1}{2}\%$  on Southern Pacific capital stock outstanding.

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Pay by Southern Pacific Co.....	149,158
Total.....	\$11,169,024
Pay to Southern Pacific Co.....	546,275
Balance to P. & L. surplus.....	\$10,622,749

Plaintiff states that the assets of the defendant company subject to assessment for taxation on July 1, 1906 and September 1, 1906, and at all times between said dates, were and are the following:

## ASSETS.

Stocks and bonds.....	\$266,180,544
Steamships .....	3,659,702
Sinking funds .....	444

## CURRENT ASSETS.

Bonds and stock owned.....	\$4,548,255
Agents and conductors .....	2,528,936
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Cash .....	8,425,188

## CONSTRUCTION ADVANCES.

Individual and companies .....	576,709
Materials, fuel and supplies.....	8,925,474
U. S. Government .....	1,222,416
Def. assets .....	29,167,208
Proprietary companies .....	19,340,875
Discount on bonds—Con Assets .....	4,470,068

Total.....	\$349,586,163
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Plaintiff states that all of the above property as herein set forth was omitted from assessment for taxation by said company for the years 1907 and 1908, and that no part of same was assessed by the County Assessor of Jefferson County by the State Board of Valuation and Assessment, or any other assessing officer or Board of Jefferson County or the State of Kentucky for the years 1907 and 1908 or either of them.

That said property amounting to four hundred million dollars is subject to assessment for State and County purposes in Jefferson County, Kentucky, the domicile of the corporation for the years 1907 and 1908 upon as assessment made as of September first, 1906, July first, 1906, September first, 1907, and July first, 1907.

Plaintiff states that said defendant company operated no railroad lines in the State of Kentucky. That its cars are operated over other railroads in Kentucky to points in the said State and through the State of Kentucky, and that in the State of Kentucky on September first, 1906, and September first, 1907, and in Jefferson County, the said defendant company had one hundred cars of the fair cash value of one thousand dollars per car, which were at points of destination, and not in transit on said date, and were in use in said State on said date, and that average number of cars of the defendant company were in use in said State on each day of said years 1906 and 1907, and were subject to assessment for taxation for the years 1907 and 1908. That throughout the years 1906 and 1907 including September first, 1906 and September first, 1907, the said defendant company had an average of one hundred cars per day in the State of Kentucky of the value as herein above set forth.

Plaintiff states that by the provisions of the Acts of 1906, Section 5, page 130, it is specifically provided—"but if any such railroad or other corporation, organized under the laws of this State have all of its lines outside of this State, the said board shall fix the value of its capital stock as hereinbefore provided, and apportion to this State for taxation therein the proper proportion and not less than one per cent of its said capital stock, and the amount so apportioned shall be the value of its intangible property, including its corporate franchise, stocks, bonds, securities, and choses in action, subject to taxation in this State and in the county, city, town, and district where its principal place of business in this State may be located."

Plaintiff states that no assessment has been made of said company under said provision of the Acts of 1906

for the years 1907 and 1908 or either of them, and that the said defendant company has paid no tax of any class, character or form to the State of Kentucky for the years 1907 and 1908, or for either of them; either under the general taxing laws of this State or under said Act of 1906.

Plaintiff states that if the said defendant company has paid any taxes to the State of Kentucky, or has been assessed for taxes by any assessing officer or board of the State of Kentucky, under said Act of 1906 for taxes for the years 1907 and 1908 or either of them; that said assessment has been at such an undervaluation of the defendant's property, which said property and its value was known to such assessing officer or board as to constitute a fraud upon the said State of Kentucky and Jefferson County, and to be wholly void and without force and effect.

Plaintiff states that said section above quoted of the Act of 1906 is such a discrimination in favor of said company as to constitute an inequality of taxation in favor of said defendant company, and against these plaintiffs, and against all other tax payers, residents and citizens of the State of Kentucky. That said Act is in conflict with the Constitution of this State, and all the provisions of said Constitution regulating and establishing a uniform system of taxation for all citizens of said State.

That the situs of all the intangible property of the defendant company is in Jefferson County, Kentucky, at the domicile of the said Company, and was on all the dates set forth, and that by said provisions of the Act of 1906 all of said intangible property, which is the chief asset of the defendant, it being a holding company is in effect an exemption from assessment for taxation for the

years 1907 and 1908, whereas the property of all other persons and corporation action having a domicile in this State, and all similar character is taxed by this State and by the county in the State where located.

Plaintiff states that that portion of the said act attempting to exempt the said property of the said defendant company as herein set forth is in contravention of Section 52, 172, 170, 181, 182, and other provisions of said Constitution regulating the powers of the Legislature to enact laws taxing and exempting property from assessment for taxation. That said Act of 1906 as above set forth is unconstitutional and void, and that said defendant's property is subject to assessment for taxation under the general laws in force taxing all property of citizens of this State having a situs in this State for taxation for State and county purposes. That the County Board of Supervisors has finally acted on the assessment of said defendant for taxation for the year 1908.

Wherefore, plaintiffs pray that this court may herein determine the amount, character, and value of the property omitted by the defendant company from taxation for the years 1907 and 1908, and assess same against said defendant company at its fair cash value, estimated at the price the same would bring at a fair voluntary sale. That said order of assessment be certified by the clerk of this court to the auditor of this State and the sheriff of this county. That the sheriff collect said taxes on said assessment as other taxes are collected by him, together with the costs and a penalty of twenty per cent. due the respective relators herein.

Plaintiffs ask for all other proper relief.

COMMONWEALTH OF KENTUCKY,

By Holland L. Anderson,

*Revenue Agent of the State at Large.*

M. J. Holt,

*Attorney.*

Filed in Jefferson County Court, March 2, 1908:

JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY AND JEFFERSON COUNTY, BY HOLLAND L. ANDERSON,  
REVENUE AGENT FOR THE STATE AT LARGE, - *Plaintiff*.

VS.

PLEA IN ABATEMENT.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant*.

The defendant, Southern Pacific Company, states that heretofore, to wit, on February 8, 1908, a supplemental statement was filed herein claiming that the defendant had omitted from assessment for the year 1908 certain property which should have been assessed. On the same day there was filed in this court another suit by the Commonwealth of Kentucky on the relation of John W. Cassaday, Revenue Agent, against this defendant, No. 3766, claiming an omission on the part of this defendant to return for assessment in whole or in part the same property which it is alleged in this cause to have been omitted.

The defendant states that the Commonwealth has no right to prosecute more than one cause for the same year and now pleads the pendency of case No. 3766, Commonwealth of Kentucky on relation of John W. Cassaday against the Southern Pacific Company as in abatement of this action, and asks the court to require the Commonwealth of Kentucky to elect which of said suits shall be prosecuted.

HUMPHREY & HUMPHREY,  
*Attorneys for defendant.*

Filed in Jefferson County Court, March 12, 1908:

JEFFERSON CIRCUIT COURT.

COMMONWEALTH OF KENTUCKY, BY GEO. H.

ALEXANDER, ETC., - - - - - Plaintiff,

vs.

No. 2467.

SOUTHERN PACIFIC COMPANY, - - - - - Defendant.

MOTION.

COMMONWEALTH OF KENTUCKY, BY JAMES W.

CASSADAY, AUDITOR'S AGENT, ETC., - - - Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, - - - - - Defendant.

Now come M. J. Holt, Attorney for George H. Alexander, Revenue Agent, etc., and Holland L. Anderson, Revenue Agent, etc., and Chas. F. Ogden, Attorney for James W. Cassaday, Auditor's Agent, etc., action No. 3766, Commonwealth of Kentucky, by James W. Cassaday against the Southern Pacific Company and make their motion to have both actions heard as one case with action No. 2467, Commonwealth of Kentucky, by George H. Alexander, Revenue Agent, etc., against Southern Pacific Company and as one case; the said cases No. 2467 and No. 3766 being between the same parties and for the year 1908 involving the same subject matter.

M. J. Holt, Attorney for Anderson, and Charles F. Ogden, Attorney for Cassaday, agreeing to assist in the prosecution of said case for the plaintiff for the year 1908, and in case of recovery for the year 1908, the penalty is to be divided equally between said Anderson and said Cassaday.

CHAS. F. OGDEN,

*Attorney for Cassaday.*

O. K., M. J. HOLT,

*Attorney for Anderson.*

Filed in Jefferson County Court, April 13, 1908:

JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, BY ETC., - - - *Plaintiff,*

*vs.*

No. 2467.

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant.*

OPINION.

COMMONWEALTH OF KENTUCKY, EX REL, ETC., - *Plaintiff,*

*vs.*

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant.*

These cases are submitted on defendant's plea in abatement as to action 2467, on the ground that said action was prematurely brought so far as the attempt to assess omitted property for the year 1908 is concerned. It appears that this suit was filed at 12:45 p. m., on February 8, 1908, which was before the adjournment of the County Board of Equalization. For that reason the plea in abatement as to the property sought to be assessed for the year 1908 is sustained.

As to the part of this proceeding which seeks to assess alleged omitted property for the year 1907, the action is not premature. In action No. 3766 defendant's motion to abate same, on the ground of the pendency of a prior action, must be overruled, as under this opinion the prior action involves only taxes for 1907, while No. 3766 involves taxes for 1908.

ARTHUR PETER, *Judge.*

Entered in Jefferson County Court May 4, 1908:

JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, - - - - *Plaintiff,*  
*vs.* MOTION.  
 SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

The defendant, the Southern Pacific Company, moved the court to require the plaintiff to reform its statement herein so as to present only a claim for omission from assessment in the year 1906 for the taxes of 1907 and to exclude therefrom any claim of omission of property for the assessment in the year 1907 for the taxes of 1908.

HUMPHREY & HUMPHREY,  
*Attorneys for defendant.*

Filed in Jefferson County Court June 1, 1908:

JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, BY ETC., - - *Plaintiff,*  
*vs.* OPINION.  
 SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

Defendant's motion to require plaintiff to reform its petition so as to present only a claim for omission from assessment in the year 1906 for the taxes of 1907, and to exclude therefrom any claim of omission of property for assessment in the year 1907 for the taxes of 1908 is overruled. The plea in abatement having been sustained as to so much of this action as involves taxes for 1908, that part of the petition will not be considered by the court. We do not think it incumbent upon the plaintiff to reform its petition.

ARTHUR PETER, *Judge.*

Filed in Jefferson County Court July 6, 1908:

JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY ON RELATION OF

HOLLAND L. ANDERSON, REVENUE AGENT, - *Plaintiff,*

*vs.*

ANSWER.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

The defendant, the Southern Pacific Company, in answer to the statement herein says:

1. It denies that it failed to list for assessment any property subject to assessment against it in the State of Kentucky as of September 1, 1906, or taxable for the year 1907, and it denies that no assessing officers ever listed such property, and denies that any property that it has or had is subject to any further assessment. It denies that there has been any omissions of assessment. It denies that any items set forth in the statement were omitted from assessment as of September 1, 1906, for the year 1907, or that any part of said items was omitted. It denies that, except as hereinafter set forth and assessed, any of such items are assessable for taxation for the year 1907. It denies that it had any property whatever in the State of Kentucky during any part of the year 1906. It denies that any of its cars were in Kentucky during the said year or any part thereof, or that any of its steamships were in Kentucky during said year or any part thereof, or that Kentucky was the situs in the year 1906 of any of its cars or of any of its steamships or that any of said cars or steamships during that year had any taxable situs in the State of Kentucky.

2. Further answering, this defendant says that it is a corporation created by and under the laws of the State

of Kentucky by two acts of the Kentucky Legislature—an act entitled, “An Act to Incorporate the Southern Pacific Company,” approved March 17, 1884, and an act amendatory of the said act, approved March 21, 1888; that all of its steamships and railroad lines have at all times been outside of the Commonwealth of Kentucky; that by the terms of its charter it was required to pay a tax of \$150.00 a year; that it paid said tax from year to year down to and including the year 1894, never at any time before or since having any property in Kentucky or carrying on any business here. In the year 1895 the then Auditor of Kentucky, L. C. Norman, demanded of defendant that it make a return under Section 4077, Kentucky Statutes. In 1896, the then Auditor of Kentucky, Samuel H. Stone, made a similar demand, insisting that the tax fixed in its charter had expired by the passage of the Revenue Law of November, 1892. This defendant appeared before the State Board of Valuation and Assessment and stated and stated truly that it had no property whatsoever in the State of Kentucky except, possibly, of the value of one hundred dollars and that it carried on no business whatever in the State of Kentucky. Through its counsel this defendant appeared before the State Board of Valuation and Assessment repeatedly during the year 1897, and the extent of its liability for assessment and the method of assessment under the laws of Kentucky were fully argued and discussed with the said Board of Valuation and Assessment and with the then Attorney General, in all its phases, the defendant at all times insisting that its charter was of no value, that it had no exclusive or peculiar privilege, that it did no business in Kentucky and that if it were to be subjected to a burden of taxation which was more than commensurate with the expense of dissolving the

Kentucky Corporation and taking out a charter in another State it would be compelled so to do. In November, 1897, the defendant filed with the State Board of Valuation and Assessment a full statement for the years 1892, 1893, 1894, 1895, 1896, and 1897, of all its rights, properties, and franchises, including all its stock, bonds, securities, choses in action and other property as called for the said State Board of Valuation and Assessment and by the sections of the law in force, directing returns to be made to the Auditor to be laid before the State Board of Valuation and Assessment. Many conferences followed between this defendant and the State Board of Valuation and Assessment, and the Attorney General, and the whole matter of law and fact was gone over in argument, both orally and in writing, the said Attorney General and the said State Board of Valuation and Assessment being in full possession of all the facts in the case and of the amount of property and the value of the property of this defendant, where it was situated and how it was used. That final determination of the said State Board of Valuation and Assessment was that under the law this defendant should be assessed upon its franchises, the amount of such assessment to be determined by the said Board of Valuation and Assessment taking into consideration the amount of its earnings in and out of Kentucky and deducting nothing from tangible property as none was assessed or assessable in Kentucky. Having arrived at this conclusion upon the law and facts of the case, the said Board fixed the assessment at the sum of \$1,000,000.00. This defendant acquiesced in the same and paid taxes upon such an assessment for the years 1893, 1894, 1895, 1896. The State Board of Valuation and Assessment followed the same method and made the same assessment for the years 1897, 1898,

1899, 1900, 1901, 1902, 1903, 1904, 1905, and 1906. For all these periods the defendant, within the time prescribed by Section 4077 and following, filed with the State Board of Valuation and Assessment a full statement of all its properties, rights, and franchises, tangible and intangible, including the items mentioned above as having been included in its former reports, and each year for which such assessment was made, the defendant has paid the tax demanded on the said assessment. The defendant repeats that the said State Board of Valuation and Assessment and the Attorney General, the principal law officer of the Commonwealth, were fully informed of defendant's position in this matter, of all the facts of the case, of the ownership of its property where it was situated and how it was used, and of the fact that if defendant's view of the law was not correct, and if there was a right to make an assessment upon all of its property and all of its capital stock, or any assessment other than the one arrived at by the method above described, the defendant would be compelled to surrender the charter which it had in Kentucky and dissolve the Kentucky Corporation. And so it is that the principal taxing authorities of the State of Kentucky, being thus fully informed of the defendant's contention in the matter and of all the facts in the case and having fully and with the advice of the chief law officer of Kentucky, examined into the laws of Kentucky upon the subject of such assessment, determined that a proper construction of the law on the subject was to subject the defendant to such franchise assessment as was made, and no other assessment of any sort. And defendant states that this practical construction made after such full consideration as aforesaid, has been acquiesced in every since by the State Board of Valuation and Assessment.

Defendant further says that this subject of the taxation of the Southern Pacific Company and what was the method under the law by which it should be taxed was a matter of great public notoriety; arguments, oral and written, were made; the subject was discussed in the newspapers and in the Legislature and had the consideration not only of the State Board of Valuation and Assessment, which was in office from January 1, 1896, to January 1, 1900, but also of the State Board of Valuation and Assessment which was in office from January 1, 1900, to January 1, 1904, and the State Board of Valuation and Assessment which was in office from January 1, 1904, to January 1, 1908; exactly the same returns have been made each year, and the assessment has never been made in any year except according to this construction of the law as thus arrived at. The defendant further says that when the Revenue Law came to be revised in the year 1902 no change was made therein which can in any way affect the liability of this defendant for any further taxation. Defendant further says that when the Revenue Law came to be revised in 1906 a full discussion was had on this subject before the joint committee of the Senate and House of Representatives having the bill in charge; the whole subject was gone into and fully explained, and thereupon there was included in Article IV, Sub-Division I of said Revenue Law, the following:

“Section 5. If the corporation organized under the laws of this State, or of some other State Government, by a railroad, telegraph, telephone, express, sleeping, dining, palace or chair car company, or a corporation performing any other public service, the lines of which extend beyond the limits of this State, the said Board will fix the value of the capital stock as hereinbefore provided, and that proportion of

the value of the capital stock which the length of the lines operated, owned, leased or controlled in this State, bears to the total length of the lines owned, leased or controlled in this State and elsewhere, shall be considered in fixing the value of the corporate franchise of such corporation liable for taxation in this State; and such corporate franchise shall be liable to taxation in each county, incorporated city, town or district, through or into which such lines pass or are operated in the same proportion that the length of the line in such county, city, town or district bears to the whole length of lines in this State; but if any such railroad or other corporation organized under the laws of this State have all of its lines outside of this State, the said Board shall fix the value of its entire capital stock as hereinbefore provided, and apportion to this State for taxation therein the proper proportion and not less than one per cent. of its said capital stock, and the amount so apportioned shall be the value of its intangible property, including its corporate franchises, stock, bonds, securities and choses in action, subject to taxation in this State and in the county, city, town, and district where its principal place of business in this State may be located."

And so it is, the defendant repeats that this construction of an apportioned assessment was made and acquiesced in from year to year by the taxing authorities of Kentucky, who have for each year from 1892 to this date had before them a full statement of all the rights, properties and franchises of this defendant, tangible and intangible, at all times, with full knowledge that if this construction was not to be adhered to it would be impossible for this defendant to continue in existence and if

such construction were to be departed from it would be necessary and it was the purpose of the stockholders of this defendant to surrender its charter.

Defendant says that under the law it is plain that only a proportion of its capital stock could at any time be assessed in Kentucky, such proportion being arrived at either by taking into consideration the miles of road in Kentucky and the miles of road out of Kentucky or the earnings in Kentucky and the earnings out of Kentucky, and defendant says that if there is any doubt as to the construction of the law the same has for these very many years and by these successive State Boards of Valuation and Assessment, received a practical construction and the same practical construction has been adopted by the Legislature in the Revenue Law of 1906.

Defendant further says that on or before October 1, 1906, and on or before October 1, 1907, it filed with the Auditor the report required from it under that part of the Act of 1906 which answers to Section 4078, and following of the Kentucky Statutes, such return having been made, as required by the Act of 1906, as of July 1, 1906, and July 1, 1907. Defendant states that the State Board of Valuation and Assessment pursuant to the terms of the Act of 1906, assessed the franchise of this defendant for the year 1907 and for the year 1908, and defendant has paid the State and county taxes on such assessment for the year 1907, and the State tax upon such assessment for the year 1908, and is ready to pay the county tax on the assessment for 1908, whenever the same shall be certified by the Auditor to the County Clerk of Jefferson County.

The defendant further says that under the Revenue Law of the State of Kentucky as passed after the adop-

tion of the present Constitution it was provided that certain corporations as described in Section 4077, of the Kentucky Statutes, should be subjected to a franchise tax and with a view of ascertaining this franchise the corporation has always been required to make a report under Section 4078 and to give such other information as the Auditor or the State Board of Valuation and Assessment might demand. The State Board of Valuation upon consideration of such report and such other information, fixed the value of the franchise. If the corporation is one which under Section 4077 of the Kentucky Statutes is subjected to a franchise tax—that is, a railroad, telegraph, telephone, express, sleeping, dining, palace or chair car company, or other like company organized under the laws of Kentucky or any other State or government, the lines of which extend beyond the limits of the State, the State Board of Valuation and Assessment fixes the value of its capital stock, and that proportion of the value of the capital stock which the length of the lines operated, owned, leased or controlled in Kentucky bears to the total length of the lines owned, operated, leased or controlled in this State and elsewhere, is considered in fixing the value of the corporate franchise of such corporation liable for taxation in Kentucky. There is deducted the value of the tangible property assessed in Kentucky. Included in this valuation of the capital stock of all these corporations is the value of the stocks, bonds, securities, and choses in action belonging to such corporations, and the same are not otherwise assessed or taxed. Defendant says that the State Board of Valuation and Assessment is bound by law and has always conceived such to be its duty, in assessing the franchise of this defendant down to the time of the pas-

sage of the Act of 1906, to take into consideration either the gross earnings rule or the mileage rule and in this way to assess only such proportion of its intangible property, including its stock, bonds, securities, and choses in action, as would result from taking into consideration either the one rule or the other, and since the passage of the act of 1906 has followed and apportionment rule there laid down.

Defendant says that if the said Board of Valuation and Assessment, had for any of said years, adopted a different method, or if any assessing officer in Kentucky had attempted to assess all of the intangible property of this defendant or had proceeded upon a basis different from that above described this being the basis employed for all similar corporations organized under the laws of Kentucky or other States and doing business in Kentucky, such action would be an unjust and unlawful discrimination against this defendant and would deprive it of its property without due process of law, and deny to it the equal protection of the laws, contrary to Article Fourteen of the amendments to the Constitution of the United States, which this defendant hereby specifically pleads, sets up and relies upon.

Wherefore the defendant prays that this proceeding may be dismissed.

HUMPHREY, DAVIE & HUMPHREY,  
*Attorneys for defendant.*

Filed in the Jefferson County Clerk's Office July 22, 1908:

JEFFERSON COUNTY COURT.

No. 2467.

COMMONWEALTH OF KENTUCKY, BY ETC., - - - *Plaintiff,*

*vs.*

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant.*

Deposition of J. B. Weaver, taken on Monday, July 20, 1908, at twelve o'clock M. at the office of Humphrey, Davie & Humphrey, 608-614, Louisville Trust Building, corner Fifth and Market Streets, Louisville, Jefferson County, Kentucky, to be read as evidence in behalf of the plaintiff in an action now pending in the Jefferson County Court, in which the Commonwealth of Kentucky, by etc., is plaintiff and the Southern Pacific Company is defendant, both parties being present by counsel.

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J. B. Weaver, being first duly sworn by me and examined by M. J. Holt, as counsel for plaintiff, testified as follows:

1. Q. State your name and connection with the Southern Pacific Company?

A. My name is J. B. Weaver, assistant clerk for the Southern Pacific Company.

2. Q. Who is the chief officer or agent of the Southern Pacific Company in the State of Kentucky?

A. I am the only officer in the State that I know of, sir.

3. Q. The Southern Pacific Company is a Kentucky corporation, is it not?

A. It is.

4. Q. And its domicile or place of business in the State of Kentucky, is where?

A. It has an office in Beechmont, State of Kentucky.

5. Q. That is its only office in the State of Kentucky?

A. Yes, sir.

6. Q. That is just beyond the limits of the city of Louisville?

A. Yes; quite a little distance from Louisville.

7. Q. Please tell just exactly what business is conducted there, at that office?

A. Well, sir, the only use I have ever known for the office is the annual meeting of the stockholders of the company.

8. Q. You occasionally have call meetings there?

A. I think I recollect one called meeting only.

9. Q. The Southern Pacific Company has no property practically in Jefferson County, State of Kentucky, has it?

A. Not at all; no, sir.

10. Q. I mean no tangible property?

A. No, sir.

Judge Humphrey: It has a house?

A. Yes; a house on my lot. Yes; I have a little office there.

11. Q. They have some cars, too, occasionally passing through this State?

A. I could not say that of my own knowledge, sir, but I presume they have.

12. Q. Or intended for points of distribution in this state and running over other lines other than the lines operated or controlled by the Southern Pacific Company?

A. That would be absolutely guess work on my part, sir. I am not familiar with the operating department of the company.

13. Q. Has the Southern Pacific Company any railroad track or any leases on any railroad in the State of Kentucky?

A. No, sir; not that I know of.

14. Q. Does it operate any railroad lines or lease any railroad lines or conduct any operations as a public utility corporation in the State of Kentucky?

A. Not to my knowledge.

15. Q. Were you served with notice by the County Board of Supervisors, which met in Jefferson County, along in January or February, 1908?

A. I think it was, sir, and if I was, I turned the notices over to Judge Humphrey; my only connection with it.

16. Q. Do you know whether or not the County Board of Supervisors acted upon the assessment of the Southern Pacific Company at that meeting held during January and February, 1908?

A. I have no personal knowledge of it; no, sir.

17. Q. I will get you to state whether or not after February 6, 1908, any notice was served upon you as to change or modification of the assessment by the County Board of Supervisors of the Southern Pacific Company?

A. I could not say as to the time, several notices were served on me and turned over to the attorney of the Southern Pacific Company.

18. Q. If any notice, Mr. Weaver, was served upon you by the County Board of Supervisors, and you have that notice or notices, will you please file same and make it part of your deposition?

A. Yes, sir. (Exhibit A.)

19. Q. Please file and make a part of your deposition all notices served upon you of the change or modification of the assessment of the Southern Pacific Company by the County Board of Supervisors which acted upon the assessment of the year 1908?

A. I will.

Signature waived.

STATE OF KENTUCKY.  
COUNTY OF JEFFERSON.

Southern Pacific R. R. Co.,  
Beechmont.

You are hereby notified to appear before the Board of Supervisors of Tax and give a list of your personalty. The Assessor having reported you delinquent, you will become liable, under Section 4061 of Kentucky Statutes, to a fine of \$100.00 if you fail to comply with this notice.

The Board of Supervisors of Tax will meet in County Assessor's office, Court House, to receive your statement, every day between 10 and 12 A. M., until February 8, 1908.

HANCOCK TAYLOR,  
*Chairman.*

BENSON O. HERR.  
WALTER S. ADAMS.  
GEO. E. SPURRIER.  
JAS. A. LEACH.  
ED. E. WETSTEIN.  
HARDY BURTON.  
JOHN C. PEARCE.

R. C. NICHOLS,  
*Secretary of the Board  
of Tax Supervisors.*

"Exhibit A" filed with and made a part of the deposition of J. B. Weaver the 22nd day of July, 1908.

Attest: S. P. RICE,  
*N. P. J. Co. Ky.*

STATE OF KENTUCKY }  
JEFFERSON COUNTY } S.S.

I, S. P. Rice, a Notary Public, in and for said county and State, certify that the foregoing deposition of J. B. Weaver, taken pursuant to agreement before me, at the time and place and in the manner mentioned in the caption, that the said witness was first duly sworn by me, that the testimony he should give in the action should be the truth, the whole truth, and nothing but the truth; that said deposition was first taken by me in shorthand, and a full and accurate transcript of same made by me, that the signature of the witness to said deposition and the reading of the same to him were waived by counsel; that the plaintiff was present by counsel and defendant was present by counsel.

My commission expires March 14, 1910.

Witness my hand this 21st day of July, 1908.

S. P. RICE,

*Notary Public, Jefferson County, Kentucky.*

Filed in the Jefferson County Court July 23, 1908:

### JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, BY ETC., - - Plaintiff,

*vs.*

DEMURRER.

SOUTHERN PACIFIC COMPANY, - - - Defendant.

Now comes the plaintiff, Commonwealth, etc., and demurs to the second paragraph of the defendant's answer, because said second paragraph fails to state facts sufficient to constitute a defense to plaintiff's statement.

COMMONWEALTH OF KENTUCKY, ETC.,

By M. J. HOLT, *Atty.*

Filed in the Jefferson County Court Clerk's Office,  
August 29, 1908:

No. 2467.

JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, BY HOLLAND L.  
ANDERSON, REVENUE AGENT FOR THE STATE  
AT LARGE, AND JEFFERSON COUNTY, BY HOL-  
LAND L. ANDERSON, REVENUE AGENT, ETC., - *Plaintiff,*

*vs.* SUPPLEMENT STATEMENT.

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant.*

Plaintiffs, Commonwealth of Kentucky and Jefferson County, by Holland L. Anderson, Revenue Agent for the State at Large, for amendment and as supplemental to the original statement heretofore filed state that on July 1, 1906, and at all times since said date the Southern Pacific Company was and is yet a corporation organized under the laws of the State of Kentucky in 1884, and having at all times since said date its principal office and place of business in Jefferson County, Kentucky.

Plaintiff states that the said defendant company neither owns, controls, nor operates any railroad in this State, nor does it own any railroad property in the State of Kentucky, nor does it hold or exercise any franchise or privilege in the State of Kentucky as a public utility corporation, nor has it at any time since it was incorporated by this State in 1884; that its legal domicile and residence at all times since its incorporation has been in Jefferson County, Ky.

That it controls through ownership of stock or by lease a large system of railroads extending from San

Francisco to New Orleans the entire system embracing nine thousand two hundred and sixty miles of railroad. That it controls and operates sixteen thousand one hundred and eighty miles of water routes on the Atlantic and Pacific Oceans and the Gulf of Mexico, but that it has no steamship lines or any tangible property in the State of Kentucky, save and except an office building and office furniture and fixtures where the meetings of its stockholders are held; that the above facts have been true and existent at all times since prior to July 1, 1906, and are yet existing.

That on July 1, 1906, September 1, 1906, and at all times since said date the said defendant company has had an authorized capitalization of one hundred million, seven per cent non-cumulative preferred, and two hundred million dollars common stock, the preferred at this time selling at \$120 per share and the common at \$105 per share. That on said dates and at all times since the said defendant company has owned stocks and bonds of various subsidiary companies owned or operated by it of the par value of three hundred and thirty millions of dollars in par value of stock of the fair cash value of two hundred and eighty millions of dollars, and three hundred and thirty-seven millions in the par value of bonds of the fair cash value of two hundred and sixty millions of dollars. That all the said bonds and stocks are either in the possession of the defendant, or are deposited with the Union Trust Company of New York, the Central Trust Company of New York or with other trustees to secure issues of capital stock or mortgages executed by the said company to secure its bonds.

That all of said property as hereinafter set forth was owned by the said defendant company on the various as-

sessing dates and was subject to assessment for taxation either ad valorem or franchise for the years 1907 and 1908 by reason of the domicile and residence of the said defendant company on each of the said assessing dates for each of said years being in Jefferson County, Kentucky. That although said property hereinafter specifically described had a taxable situs and was liable for State and county taxes for each of said years to the State of Kentucky and Jefferson County, none of said property was assessed by the said defendant company, or by any one for it, or by any assessing officer or board or court of Jefferson County or the State of Kentucky for either of said years 1907 and 1908. That the time has expired for the defendant to list said property. That all assessing officers and boards have made final reports and adjourned and none of said property has been assessed. That said property so omitted from assessment for taxation for the years 1907 and 1908 is described as follows:

The following steamships "El Alba," "El Dia," "El Sigo," and "El Valle," all of the fair cash value of two million three hundred thousand dollars, other water craft, including ferries, floats, and barges, five hundred thousand dollars.

All the stocks set out in detail on pages two and three of the supplemental statement, filed February 8, 1908, of the par value of \$233,744,533.00, and of the fair cash value of two hundred and ten million dollars estimated at the price same would bring at a fair voluntary sale.

All the bonds set forth in detail on pages three, four, and five of the supplemental statement, filed February 8, 1908, of the par value of \$14,342,150.00 and of the fair cash value of fourteen million dollars. All the stocks set forth in detail on pages four and five of said supple-

mental statement of the par value of \$20,410,051.00 and of the fair cash value of twenty million dollars.

All the stocks and bonds not included in the above set forth in their reports for the years 1907 and 1908 to the State Auditor, which reports are filed herewith and made a part hereof as though set out in full herein, showing stocks and bonds not set out in said supplemental statement, but included in said reports of the fair cash value of one hundred and three million dollars.

Surplus for the year 1907, \$8,878,484.00; for the year 1908, \$9,643,275.00. Cash in the hands of agents and conductors, \$2,528,936.00 for 1907; and \$2,846,742.00 for 1908. Bills receivable, \$52,897,543.00 for the year 1907; and \$52,849,345.00 for the year 1908.

All the above property of the fair cash value as above set forth estimated at the price same would bring at a fair voluntary sale on each of the assessing dates for each of the years 1907 and 1908.

Plaintiffs state that all of the above property as herein set forth was omitted from assessment from taxation by said company for the years 1907 and 1908 and that no part of same was assessed by the County Assessor of Jefferson County by the State Board of Valuation and Assessment or any assessing officer or board of Jefferson County or the State of Kentucky for the years 1907 and 1908 or either of them.

That said property amounting to \$400,000,000.00 is and was subject to assessment for State and county purposes in Jefferson County, Kentucky, the domicile of the corporation, for the years 1907 and 1908 upon the assessing dates for said years.

## II.

Plaintiffs state that should the defendant company not be liable or subject to an ad valorem tax on said property above described for the years 1907 and 1908, then defendant by reason of its domicile and principal place of business and nature of its business is liable to the State of Kentucky for a franchise tax.

They state that it has been repeatedly decided by the Court of Appeals of this State, which decision has been upheld and affirmed by the Supreme Court of the United States that a franchise tax under the statutes of this State included or was an intangible property tax and included and assessed for taxation all of the intangible property of the company which was assessed with a franchise tax. (Plaintiffs make their first paragraph a part of this their second paragraph as though set forth in full herein.)

They state that the State Board of Valuation and Assessment by statute are required to make an assessment of the franchise of all public utility corporations having or exercising special privileges not allowed by law to natural persons. That the defendant company in operating a railroad is by the law of this State a public utility corporation exercising such privilege and liable to a franchise tax. That for each of said years 1907 and 1908 it made an annual report to said Board of its intangible property which said report for the years 1907 and 1908 (on which the said franchise is supposed to be based and by law shall be based) showed that the intangible property of said defendant company was worth more than four hundred million dollars, estimated at the

price said property would bring at a fair voluntary sale. That the said Board knew the fair cash value of said intangible property to be four hundred million dollars, knew that an assessment of defendant's franchise for taxation as decided by the courts of this State was an assessment of defendant's intangible property, and yet with a full knowledge of all the facts as to the value of said property and of the law, that it included an assessment of said property, assessed the said property for the year 1907 at two million three hundred and seventy-four thousand dollars (\$2,374,000.00) and for the year 1908 at two million three hundred and seventy-four thousand dollars (\$2,374,000.00)). That said assessment was not made in the manner required by law. That said assessment was not made in the time specified by law; that said assessment was such an undervaluation as in fact was no assessment; was fraudulent and void; was not uniform and the property valued as required by the Constitution and the laws then in force in this Commonwealth; and is not binding and conclusive upon these plaintiffs. That the assessment for 1907 was made by the Board on Nov. 27, 1907, and for 1908 on March 27, 1908.

They file herewith copies of the reports made by the defendant to the State Board of Valuation and Assessment as also copies of the record showing the assessment made by said board for each of said years and mark same Exhibit A, B, C, and D for identification.

## III.

Plaintiffs make their First Paragraph a part of this the Third Paragraph as though set forth in full herein and state: That by the provisions of the Act of 1906, Sec. 5, page 130, it is expressly provided: "But if any such railroad or other corporation, organized under the laws of this State have all its lines outside of this State, the said Board shall fix the value of its entire capital stock as hereinbefore provided, and apportion to this State for taxation therein the proper proportion, and not less than one per cent of its said capital stock and the amount so apportioned shall be the value of its intangible property, including its corporate franchise, stocks, bonds, securities and choses in action, subject to taxation in this State and in the county, city, town, and taxing district where its principal place of business in this State may be located."

Plaintiffs state that no assessment has been made of said company under said provisions of the Acts of 1906 for the years 1907 and 1908, or either of them, and that the said defendant company has paid no tax of any class character or form to the State of Kentucky for the years 1907 and 1908, or for either of them, either under the general taxing laws of this State or under said Act of 1906.

Plaintiff states that if the said defendant company has paid any taxes to the State of Kentucky or has been assessed for taxes by any assessing officer or board of the State of Kentucky under the said Sec. 5 of the Acts of 1906 for taxes for the years 1907 and 1908, or either of them, that said assessment was made at such an undervaluation of defendant's property which said prop-

erty and its fair cash value were known to said assessing officer or board, as well as its fair cash value, as well as the law governing said assessment, and such an assessment with a full knowledge of the facts and the law was such an undervaluation of the known value of said property as to, in fact, be no assessment of said property and to constitute a fraud upon this State and county, and to be wholly void and without force and effect.

That said section of said Acts of 1906, above quoted, is such a discrimination in favor of said company and similar companies as to amount to an unconstitutional exemption of property from assessment for taxation. That said law creates an inequality of taxation in favor of said defendant and similar companies and against these plaintiffs and all other tax payers, residents, and citizens of the State of Kentucky the same as the defendant. That said act is in conflict with the Constitution of this State, and all the provisions of said Constitution regulating and establishing a uniform system of taxation for all citizens of this State on all property having a taxable situs in this State.

That the situs of all the intangible property of the defendant company is in Jefferson County, Kentucky, at the domicile of the said company, and was on all the dates above set forth, and that by the said provisions of the Act of 1906 all of said intangible property, which is the chief asset of the defendant, it being a holding company, is in effect exempted from assessment from taxation for the years 1907 and 1908, whereas the property of all other persons and corporations having a domicile in this State, and all property of a similar character is taxed by this State and by the County Assessor in the State where located.

Plaintiffs state that that portion of the said Act of 1906 attempting to exempt the said property of the said defendant company as herein set forth is in contravention of Sections 52, 172, 170, 181, 182, 174, and other provisions of said Constitution regulating the power of the Legislature to enact laws taxing and exempting property from assessment for taxation. That the said Act of 1906 as above set forth is unconstitutional and void, and the attempted assessment of said property under said act is void and without binding force and effect upon these plaintiffs and the action of the Board of Valuation and Assessment, in making such assessment, was *ultra vires* and void. That said property of defendant is subject to assessment for taxation under the general laws in force and effect taxing all the property of its citizens of this State whether intangible or tangible personalty having a situs in this State, at its fair cash value estimated at the price said property would bring at a fair voluntary sale.

That all assessing officers having authority for said years to assess said property have made their final reports, and that all assessing boards for said years have finally acted and adjourned.

WHEREFORE the premises considered plaintiffs pray that this court assessed all of said property omitted from assessment by said defendant for the years 1907 and 1908, and that the relator herein be awarded a penalty of twenty per cent. Plaintiff prays for all proper relief.

COMMONWEALTH OF KENTUCKY,

By HOLLAND L. ANDERSON,  
*Revenue Agent.*

COMMONWEALTH OF KENTUCKY AND  
JEFFERSON COUNTY,

By JOSEPH SELLIGMAN,  
*County Attorney.*

M. J. HOLT, *Attorney.*

Filed in Jefferson County Clerk's Office September 23,  
1908:

JEFFERSON COUNTY COURT.

No. 2467.

COMMONWEALTH OF KENTUCKY, BY ETC., - - *Plaintiff,*

vs. NOTICE TO TAKE DEPOSITIONS.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

To Southern Pacific Company and Judge Alex Humphrey, Counsel of Record.

You, and each of you, are hereby notified that on the 18th day of September, 1908, between the hours of 10 A. M. and 4 P. M. the plaintiff, Commonwealth of Kentucky, by etc., at the State Auditor's office, Frankfort, Ky., will proceed to take the deposition of C. W. Parrish and Frank P. James (Auditor) to be read as evidence in behalf of plaintiff in the above-styled action now pending in the Jefferson County Court, wherein Commonwealth of Kentucky, by etc., is plaintiff and Southern Pacific Company is defendant.

(Signed) COMMONWEALTH OF KENTUCKY,  
BY ETC.

M. J. HOLT, *Attorney.*

Same acknowledged Sept. 18, 1908.

(Signed) ALEX P. HUMPHREY.

## JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, BY ETC.,

*vs.*

SOUTHERN PACIFIC COMPANY.

The deposition of Frank P. James, taken in his office at Frankfort, Kentucky, pursuant to notice hereto attached and made part hereof. Present: Joseph Selligman, County Attorney of Jefferson County, for plaintiff, and Alex P. Humphrey, Esq. for defendant.

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Examined by Joseph Selligman.

Q. What is your name?

A. Frank P. James.

Q. Mr. James, what official position do you now hold?

A. Auditor of Public Accounts of the Commonwealth of Kentucky.

Q. Since what time have you been Auditor?

A. Since January 7, 1908.

Q. Who are the members of the present State Board of Valuation and Assessment?

A. Edwin Farley, Treasurer; Ben L. Bruner, Secretary of State; and Frank P. James, Auditor.

Q. To whom were the reports of the Southern Pacific Company, upon which the last two assessments were based, made?

A. The report was received by this office.

Q. At the time of making the 1907 assessment the Board was not composed of the present officials, but by men occupying the same office?

A. Yes; the same office.

Q. When were these reports filed for the last two assessments made upon the Southern Pacific Company?

A. I do not know that this office shows that. It would show when they were made up and sworn to.

Q. Is there no endorsement on them, showing when they were filed in this office?

A. No.

Q. State when the 1907 reports appears to have been made up, according to dates only?

A. It was sworn to on the 22nd day of September, 1906, for 1907. The report shows the values as of June 30, 1906.

Q. As a basis of 1908 assessment kindly give me similar information as to that?

A. This report seems to have been sworn to September 21, 1907, as of June 30, 1907.

Q. That is, the report upon which the 1908 assessment was to be based?

A. Yes.

Q. When were these reports acted upon by the State Board of Valuation and Assessment? State first as to the 1907 report, then as to the 1908 report?

A. As to the 1907 report, I could only state by looking at the record. They were notified of the assessment November 27, 1907.

Q. That is, that the assessment had been made?

A. Yes.

Q. From the records in your office, will you kindly state when the records had been made?

A. I can do that. On the same day that the notice was sent. November 27, 1907.

Q. What were the values placed upon its intangible property by the Southern Pacific Company for the years 1907 and 1908 respectively?

A. The values of the Board, insofar as they fixed it, are set out in the reports, copies of which are filed as a part of this deposition. The company fixed the estimate of its market value of substantially all of its bonds, but gave only the par value of its stock and the number of shares which it held. This can likewise be found in the exhibit, which will be filed.

Q. Will you kindly file copies of the reports so made by the Southern Pacific Company for the years 1907 and 1908, and mark them Exhibits "A" and "B" respectively for identification?

A. Yes; I will do so.

(Counsel for defendant waives any requirement that copies be certified.)

Q. What was the assessment placed against the Southern Pacific Company for the years 1907 and 1908 by the State Board of Valuation and Assessment?

A. Two million three hundred seventy-four thousand one hundred eighty-nine dollars (\$2,374,189.00), the same in each year. The 1907 assessment being made November 27, 1907, and the 1908 assessment being made March 11, 1908.

Q. How were these values arrived at for each year?

A. For 1907 I could not answer, as I was not a member of the Board in 1907.

Q. Is there anything on the minutes to show what evidence was heard?

A. I do not know of anything.

Q. Was there a minute made for 1908 as to what evidence was heard?

A. I do not think so.

Q. As to 1908, what evidence or testimony was submitted or heard?

A. I think nothing but the reports.

Q. Did the Board then consider only these reports in making that 1908 assessment?

A. Yes.

Q. How was the value for 1908 arrived at?

A. My recollection is that we took one per cent of its capital.

Q. Without reference to the stocks or bonds listed in the report and submitted to you?

A. Upon its capitalization.

Q. Did your Board at all consider the values, or attempt to estimate the values of these stocks and bonds reported to you by the Southern Pacific Company as being owned by them?

A. I think not.

Q. Was any assessment for either of the years 1907 or 1908 made by the Railroad Commission of the tangible property of the Southern Pacific Company?

A. I think not. No record of it here.

Q. The reports of the Railroad Commission of the tangible property are made to the Auditor?

A. Yes.

Q. Was any assessment of the tangible property of the Southern Pacific Company for either the years 1907 or 1908 certified to the Auditor by the Railroad Commission?

A. There was not.

Q. What other assessments, if any, for license, franchise, ad valorem, or any other tax, have been made, or were made against the Southern Pacific Company for the years 1907 or 1908 by this Board or any other State Board?

A. None other, to my knowledge.

Q. If such had been made, it would necessarily have been certified to this office, to become a record of this office to be valid?

A. Yes.

Q. In fixing the assessed value of the property of the Southern Pacific Company for the year 1907 or 1908, was any attempt made by the State Board of Valuation and Assessment to value the intangible property of the company at its fair cash value, estimated at the price it would bring at a fair voluntary sale upon the ground that Jefferson County was the domicile, or residence of the company, and the taxable situs of the company was at that place, or was any such attempt made at all?

A. There was not.

Q. Did the State Board consider the cash value of the intangible property of the company, estimated at the price it would bring at a fair voluntary sale, at all in fixing this assessment?

A. It did not.

Q. Under what act or authority and at what rate of valuation was this assessment made?

A. The valuation for assessment of said company for the years 1907 and 1908, was made under Section five, page one hundred thirty, of the Acts of 1906, and was at the rate, or upon the basis of one per cent. of the par value of the capital stock of the Southern Pacific Company.

Examined by Judge Alex P. Humphrey.

Q. Mr. James, as to the method of proceeding of the Board November, 1907, do you only state from the records?

A. Yes.

Q. In reference to the method of proceeding by the Board in 1908, you were then a member?

A. Yes.

Q. Now, in reference to the assessment made by your Board, I will ask you to look at the report of the Southern Pacific Company, filed in September, 1907, and made up as of June 30, 1907, and state if that report does not show that the highest price at which the common stock had sold the previous year at \$97.50 per share, and

the highest price at which the preferred stock was sold during the previous year was \$120.38. Now, in fixing the value of the Southern Pacific Company, pursuant to the act to which Mr. Selligman called attention, you fixed the total value of the capital stock at the par value of both common and preferred?

A. We took the amount of the capital stock paid up, \$237,418,958.64, as the value of the capital stock, and then took one per cent of that as applicable under the Act.

Q. There were at that time, I believe, Mr. James, of preferred stock three hundred ninety-five thousand six hundred ninety-seven (395,697) shares, and of the common stock one million nine hundred seventy-eight thousand four hundred ninety-two shares (1,978,492)?

A. Yes.

Q. Your Board, in making the assessment in March, 1908, attempted to follow, and in the opinion of the Board did follow, the Act to which Mr. Selligman had reference?

A. Yes.

F. P. JAMES.

Subscribed and sworn to before me by Frank P. James this 18th day of September, 1908. My commission expires March 16, 1912.

WM. H. VANWINKLE,  
*Notary Public, Franklin Co., Ky.*

Filed in Jefferson County Court September 28, 1908:

JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, BY ETC., - - Plaintiff,

vs.

REPLY.

SOUTHERN PACIFIC COMPANY, - - - Defendant.

The plaintiff, Commonwealth of Kentucky and Jefferson County, for reply to the answer of defendant,

state that they have not information sufficient to form a belief, and therefore deny that the defendant, Southern Pacific Company, through its counsel or agents, in 1895, 1896, and 1897, appeared before the State Board of Valuation and Assessment and stated, and stated truly, that it had no property in the State of Kentucky on the various assessing dates of said years, that it had no property in the State of Kentucky, except probably of the value of \$100.00. Deny that its said counsel appeared before the State Board of Valuation and Assessment repeatedly during the year 1897 and argued and discussed with the State Board of Valuation and Assessment with the Attorney-general the extent of defendant's liability for assessment and the method of its assessment under the laws of the State of Kentucky in all its phases, defendant at all times insisting that its charter was of no value, that it had no exclusive or particular privileges, that it did no business in Kentucky and that if it were to be subjected to a burden of taxation which was more than commensurate with the expense of dissolving the Kentucky corporation and taking out a charter in another State, it would do so.

Deny that in November, 1897, the defendant filed with the State Board of Valuation and Assessment a full statement for the years 1892, 1893, 1894, 1895, 1896, and 1897 of all its rights, properties, and franchises, including all the stocks, bonds, securities, choses in action and other property as called for by the State Board of Valuation and Assessment and by the sections of the law in force directing the terms to be made to the Auditor to be laid before the State Board of Valuation and Assessment.

Deny that any conferences followed between the defendant and the State Board of Valuation and Assessment and the Attorney-general, and that the whole matter of law and fact was gone over in argument, both orally and in writing.

Deny that the Attorney-general and the State Board of Valuation and Assessment was that under the law the all the facts in the case and of the amount of property and of the value of the property of this defendant and where it was situated and how it was used.

Deny that the final determination of the State Board of Valuation and Assessment was that under the law the defendant should be assessed upon its franchise the amount of such assessment to be determined by the said Board of Valuation and Assessment, taking into consideration the amount of its earnings in and out of Kentucky and deducting nothing for tangible property, as none was assessed or assessable in Kentucky. Plaintiffs state that if such a method of assessment was pursued, it was *ultra vires* and void, was not done in the time and manner required by statute, was a discrimination in favor of defendant in contravention of the State Constitution requiring the assessment of all property to be uniform and was not an assessment such as is contemplated and demanded under the laws of this State applicable to the property of defendant which has a taxable situs in this State. That if such a method was pursued and adopted by said Board for said years and succeeding years, including the years 1907 and 1908, it was such an undervaluation of defendant's property disclosed by the facts presented to the Board as having a taxable situs in this State as in effect amounted to a mere nominal assessment and was a fraud upon these plaintiffs.

Plaintiffs admit that the said Board fixed the franchise valuation of defendant at \$1,000,000.00; they state that in doing so they disregarded the law applicable to assessment of defendant's property, and did it as a matter of policy and because they were made to believe that the said defendant would dissolve the Kentucky corporation and take out a charter in another State. That said Board could only act in a ministerial capacity and in the

manner and within the time required by law. That these plaintiffs are not bound by said assessments for said years, or for the years 1907 and 1908, or any of them, nor concluded upon the issue of valuation, nor concluded as to the manner of assessment, nor concluded in assessing other property and levying a tax other than a franchise tax upon defendant's property for the years 1907 and 1908. Nor plaintiffs concluded by the acts of its assessing officers or Board unless said officers and Board acted in the manner provided by the Constitution of this State, in the manner set out in the laws then in force and within the time required by statute.

Plaintiffs deny that for the years 1893 to 1908, inclusive, that any assessment was made against the defendant or upon its property, save and except, such as was made by judgments entered in the Jefferson County Court and by the assessing officers of Jefferson County, and then only for the amount and kind of property set out and described in said judgment or assessment.

Deny that for all the years from 1893 to 1908, inclusive, the defendant within the time allowed prescribed by section 4077 and following filed with the State Board of Valuation and Assessment a full statement of all its properties, rights, and franchises, tangible and intangible, including the items mentioned above as having been included in its former reports.

Plaintiffs again deny (since "defendant repeats") that the State Board of Valuation and Assessment and the Attorney-general, the principal law officer of this Commonwealth, were fully informed of defendant's proposition in this matter, of all the facts of the case, of the ownership of its property, where its was situated and how it was used and of defendant's view of the law. They admit that said officers were cognizant of defendant's contentions as to the law and gave too much force to the argument of its very learned counsel, and also to

its declaration "that if there was a right to make an assessment upon all its property and all its capital stock, or any assessment other than the one arrived at (of \$1,000,000.00 upon exceeding \$300,000,000.00 of intangible property) by the method above described the defendant would be compelled to surrender the charter which it had in Kentucky and dissolve the Kentucky Corporation." Plaintiffs state that method pleaded if actually resorted to, was void and not within the time and manner required by the organic and Statutory laws of this Commonwealth, but entirely satisfactory to the defendant and apparently so to the Fiscal and Assessing officers of the Commonwealth. Plaintiffs deny that the principal taxing authorities of this State, or the taxing authorities of this State authorized by law to assess the property of defendant or any taxing officer or Board except as herein admitted being informed of defendant's contention in the matter and of all the facts in the case, and having fully and with the advice of the chief law officer of Kentucky examined into the laws of Kentucky upon the subject of such assessment, determined that a proper construction of the law on the subject was to subject the defendant to such franchise assessment as was made, and no other assessment of any sort. Plaintiffs deny that this was a practical construction of the law, deny that it is the law, deny that it was made after full consideration, deny that it has been acquiesced in by said Board and the Attorney General.

Plaintiffs state the facts to be, that for the tax years of 1906, 1907, and 1908, upon an assessment as of September 1st of the previous year, it was insisted by the Assessor of Jefferson County, the Board of Supervisors, the County Attorney of Jefferson County, the Revenue Agents for the State at Large, and their counsel; by Honorable Napoleon Bonaparte Hays, then Attorney General of this Commonwealth, by Honorable James

Breathitt, now Attorney General, his assistants and special counsel now employed by the State, that the State Board of Valuation and Assessment had no right or authority to list or assess a franchise tax against the defendant, that the only assessment which could be made against the defendant or upon its property was its intangible property having a taxable situs in this Commonwealth, because the domicile of said company was in Beechmont, Jefferson County, Kentucky, and such tangible property if any the defendant had in the State of Kentucky permanently located and in use there, and for that reason having a taxable situs therein. That the said defendant was not liable to a franchise tax to the State of Kentucky because it exercised no special privilege in Kentucky not allowed by law to natural persons, but must be and should be assessed by the local assessor under the general taxing laws of this State upon its intangible property because of its domicile, and because of the fact that it was a holding company and not a railroad company in so far as this State was concerned, although by its charter derived from this State it could operate a railroad but never has in this State.

Defendant has not yet dissuaded the local assessing officers of this County and State, the several Revenue Agents and their counsel, that this is not the correct situation and the law but insist on still persuading the State Board of Valuation and Assessment in assessing a franchise tax against it of \$1,000,000.00 for the sole purpose of pleading such assessment in bar of a real assessment of its intangible property worth at all times since prior to June 30, 1906, three hundred million dollars and have appeared at all times perfectly satisfied with said franchise assessment, and have long since abandoned their contention that they were not liable for a franchise tax, but have become contented that ardent and brilliant advocates of a franchise instead of an ad valorem assess-

ment, and at no time have raised any question in any court against the assessment of a franchise tax against them, and will not until assessed for exceeding one-three-hundredth part of the fair cash value of their property subject to assessment in this State by the County and State Assessors under the general law.

Plaintiffs state further that at all times since 1902, the defendant has never permitted an issue involving this question or the right of the State Board of Valuation and Assessment to assess its property or its franchise to be determined by any court or courts that although suits have been commenced in the Franklin Circuit Court, the Jefferson Circuit Court, the Jefferson County Court, involving this issue for each of the years 1902 to 1906, inclusive, they have uniformly been compromised, agreed judgments been entered assessing property for ad valorem taxes and enormous fees been paid defendant's counsel for such satisfactory settlement.

Plaintiffs admit that this subject of taxation of the Southern Pacific Company was the method under the law by which it should be taxed was a matter of great public notoriety and subject of general discussion, but never subject to judicial determination because of said settlements by defendants and the confession of its liability for ad valorem taxes. It admits that the State Board of Valuation and Assessment each year has made a franchise assessment against the defendant of one million dollars, when by the reports of defendant (which plaintiffs admit have been "exactly the same returns" each year regardless of the advance or depreciation in value or the increase or decrease in earnings) if assessed at all by said Board it should have been assessed at exceeding three hundred million dollars because a franchise assessment as construed by the Court of Appeals is not only an assessment of defendant's special privileges but an intangible property tax also, and said reports disclose the

greater portion of said intangible property to the said Board and said assessment shows by the figures a failure by said Board to assess said defendant in the manner required by law.

Plaintiffs deny that when the revenue law came to be revised in 1906, a full discussion was had before the Joint Committee of the State and House of Representatives having the bill in charge; the whole subject was gone into and fully explained; and thereupon there was included in Article IV, Sub-Division of said Revenue Law Section V quoted in full in defendant's answer. Plaintiffs state that said Section V was prepared by counsel for defendant and passed after a modification by some one having the interest of the Commonwealth more at heart than the draftsman, by changing the clause now reading "not less than one per cent" from as it originally read to "not more than one per cent." That the material discussion heard by the Committee was by counsel for defendant, who used the same arguments they have each year used with the State Board of Valuation and Assessment to procure the assessment of their three hundred million dollars worth of property at one million dollars, and it is insisted by plaintiffs that said property must have been assessed at its fair cash value or not at all.

Plaintiffs deny that under the law it is plain that only a proportion of its capital stock could at any time be assessed in Kentucky. Deny that the assessment against the defendant for the years 1907 and 1908 was arrived at either by taking into consideration the miles of road in Kentucky and the miles of road out of Kentucky or the earnings in Kentucky and the earnings out of Kentucky or by the other method adopted by the State Board not mentioned by defendant, *i. e.*, by deducting the tangible property from the "capital stock" the remainder constituting the franchise valuation. They state that there were no earnings in Kentucky, that no road was operated

in Kentucky, that no privileges were exercised in Kentucky not allowed by law to natural persons. That said assessments for said years were made and at the figures made because of the argument and persuasive and threatening powers of defendant's counsel.

Plaintiffs deny that the State Board of Valuation is bound by law and always conceived such to be its duty, in assessing the franchise of the defendant down to the passage of the Act of 1906, to take into consideration either the gross earnings rule or the mileage rule and in this way to assess only such proportion of its intangible property including its stocks, bonds, securities, and choses in action as would result from taking into consideration either one rule or the other. Deny that since the Act of 1906 has followed the apportionment rule there laid down.

Plaintiffs deny that had the Board of Valuation and Assessment adopted a different rule or had any assessing officer or Board of this Commonwealth attempted to assess all of the intangible property of this defendant or had proceeded upon a basis different from the one above described, such action would have been or would be an unjust and unlawful discrimination against this defendant and would deprive it of its property without due process of law and deny to it the equal protection of the laws, contrary to Article XIV of the Amendments to the Constitution of the United States.

II. Plaintiffs state that should the defendant company not be liable or subject to an ad valorem tax on said property above described for the years 1907 and 1908, then defendant by reason of its domicile and principal place of business and nature of its business is liable to the State of Kentucky for a franchise tax.

They state that it has been repeatedly decided by the Court of Appeals of this State, which decision has been upheld and affirmed by the Supreme Court of the United

States that a franchise tax under the statutes of this State included or was an intangible property tax and included and assessed for taxation all the intangible property of the company which was assessed with a franchise tax.

They state that the State Board of Valuation and Assessment by statute are required to make an assessment of the franchise of all public utility corporations having or exercising special privileges not allowed by law to natural persons. That the defendant company in operating a railroad is by the law of this State a public utility corporation exercising such privileges and liable to a franchise tax. That for each of said years 1907 and 1908 it made an annual report to the said Board of its intangible property which said report for the years 1907 and 1908 (on which the said franchise is supposed to be based and by law shall be based) showed that the intangible property of said defendant company was worth more than four hundred million dollars estimated at the price said property would bring at a fair voluntary sale.

The said Board knew the fair cash value of said intangible property to be four hundred million dollars, knew that an assessment of defendant's franchise for taxation as decided by the courts of this State was an assessment of defendant's intangible property, and yet with a full knowledge of all the facts as to the value of said property and of the law, that it included an assessment of said property, assessed the said property for the year 1907 at two million, three hundred and seventy-four thousand dollars (\$2,374,000.00) and for the year 1908 at two million, three hundred and seventy-four thousand dollars (\$2,374,000.00). THAT SAID ASSESSMENT WAS NOT MADE IN THE MANNER REQUIRED BY LAW. THAT SAID ASSESSMENT WAS NOT MADE IN THE TIME SPECIFIED BY LAW—THAT SAID ASSESSMENT WAS SUCH AN UNDERVALUA-

TION AS IN FACT WAS NO ASSESSMENT; WAS FRAUDULENT AND VOID—WAS NOT UNIFORM AND THE PROPERTY VALUED AT ITS FAIR CASH VALUE AS REQUIRED BY THE CONSTITUTION AND THE LAWS THEN IN FORCE IN THIS COMMONWEALTH—and is not binding and conclusive upon these plaintiffs. That the assessment for 1907 was made by the Board on November 27, 1907 and for 1908 on March 27, 1908.

They file herewith copies of the reports made by the defendant to the State Board of Valuation and Assessment as also copies of the record showing the assessment made by said Board for each of said years and mark same Exhibits A, B, C, and D for identification.

III. Plaintiffs state that by the provisions of the Act of 1906, Sec. 5, page 130, it is expressly provided: "but if any such railroad or other corporation, organized under the laws of this State have all its lines outside of this State, the said Board shall fix the value of its entire capital stock as hereinbefore provided, and apportion to this State for taxation therein the *proper* proportion and not less than one per cent of its said capital stock, and the amount so apportioned shall be the value of its *intangible* property, including its corporate franchise, stocks, bonds, securities, and choses in action, subject to taxation in this State and in the county, city, town and taxing district where its principal place of business in this State may be located."

Plaintiffs state that no assessment has been made of said company under said provision of the Acts of 1906 for the years 1907 and 1908 or either of them, and that the said defendant company has paid no tax of any class, character or form to the State of Kentucky for the years 1907 and 1908 or for either of them; either under the general taxing laws of this State or under said Act of 1906.

Plaintiffs state that if the said defendant company has paid any taxes to the State of Kentucky or has been assessed for taxes by any assessing officer or Board of the State of Kentucky under the said Sec. 5 of the Acts of 1906 for taxes for the years 1907 and 1908 or either of them, that said assessment was made at such an undervaluation of defendant's property, which said property and its fair cash value were known to said assessing officer or Board as well as its fair cash value as well as the law governing said assessment, and such an assessment with a full knowledge of the facts and the law was such an undervaluation of the known value of said property as to in fact be no assessment of said property and to constitute a fraud upon this State and County, and to be wholly void and without force and effect.

That said section of said Acts of 1906 above quoted is such a discrimination in favor of said company and similar companies as to amount to an unconstitutional exemption of property from assessment for taxation. That said law creates an inequality of taxation in favor of said defendant and similar companies and against these plaintiffs and all other taxpayers, residents, and citizens of the State of Kentucky the same as the defendant. That said Act is in conflict with the Constitution of this State and all the provisions of said Constitution regulating and establishing a uniform system of taxation for all citizens of this State and all property having a taxable situs in this State.

That the situs of all the tangible property of the defendant company is in Jefferson County, Kentucky, at the domicile of the said company, and was on all the dates set forth and that by the said provisions of the Act of 1906 all of said intangible property, which is the chief asset of the defendant, it being a holding company, is in effect exempted from assessment for taxation for the years 1907 and 1908, whereas the property of all other

persons and corporations having a domicile in this State, and all property of a similar character is taxed by this State and by the County Assessor in the State where located.

Plaintiffs state that: that portion of the said Act of 1906 attempting to exempt the said property of the said defendant company as herein set forth is in contravention of Sections 52, 172, 174, 170, 181, 182, and other provisions of said Constitution regulating the power of the Legislature to enact laws taxing and exempting property from assessment for taxation. That the said Act of 1906 as above set forth is unconstitutional and void, and the attempted assessment of said property under said Act is void and without binding force and effect upon these plaintiffs, and the action of the Board of Valuation and Assessment in making such assessment was *ultra vires* and void. That said property of defendant is subject to assessment for taxation under the general laws in force and effect taxing all the property of the citizens of this State whether intangible or tangible personalty having a situs in this State, at its fair cash value, estimated at the price same would bring at a fair voluntary sale.

That all assessing officers having authority for said years to assess said property have made their final reports, and that all assessing Boards for said years have finally acted and adjourned.

Wherefore the premises considered, plaintiffs pray as in their original statement.

COMMONWEALTH OF KENTUCKY,

By H. L. Anderson

M. J. Holt, *Atty.*

Entered in Jefferson County Court September 29, 1908:

JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, BY HOLLAND

L. ANDERSON, ET AL., - - - - - *Plaintiff,*

*vs.* No. 2467.

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant.*

ORDER.

COMMONWEALTH OF KENTUCKY, BY JOHN W.

CASSADAY, REVENUE AGENT, - - - - - *Plaintiff,*

*vs.* No. 3766.

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant.*

On motion of the plaintiff in the above entitled cause it is ordered that they be heard together.

And then came the plaintiff in the above entitled cause and it is now ordered that the supplemental statement filed in the office herein on August 29, 1908, be now noted of record.

And came also the plaintiff in the said entitled cause and filed a reply, and the said reply shall be taken as also applying to the answer of the defendant filed in the second above entitled cause, and leave is given to the defendant for two weeks to file an answer to the said supplemental statement and a rejoinder to the said reply.

It is further order, by consent, that there shall be read on the hearing of these cases the following evidence taken in the cause of the Commonwealth of Kentucky against the Southern Pacific Company No. 2607 in this court:

Stipulation and exhibits filed July 7, 1908.  
 Deposition and exhibits of Polk Laffoon.  
 Deposition and exhibits of William Mahl.  
 Seen M. J. Holt, for plaintiff, Jno. W. Cassaday.  
 H. D. H.

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Said stipulation and deposition of Polk Laffoon with exhibits are as follows, to wit:

Stipulation as to taxes paid in New York, California and Oregon and exhibits, filed in the County Clerk's Office July 7, 1908.

#### FRANKLIN CIRCUIT COURT.

No.

COMMONWEALTH OF KENTUCKY, - - - - *Plaintiff.*

*vs.* STIPULATION.

SOUTHERN PACIFIC COMPANY, ET AL., - - - *Defendant.*

AND

No. 2607.

#### JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, - - - - *Plaintiff.*

*vs.* STIPULATION.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

AND

No. 45770.

#### JEFFERSON CIRCUIT COURT.

COMMONWEALTH OF KENTUCKY, - - - - *Plaintiff.*

*vs.* STIPULATION.

SOUTHERN PACIFIC COMPANY, AND THE BOARD OF  
 SUPERVISORS OF JEFFERSON COUNTY, - *Defendants.*

It is agreed and stipulated between the parties hereto, that the following facts are true and that they may be read as evidence in each of the above styled actions, to-wit, in the case of the Commonwealth of Kentucky vs. Southern Pacific Company, et al., pending in the Franklin Circuit Court; in the case of the Commonwealth of Kentucky vs. Southern Pacific Company No. 2607, now pending in the Jefferson County Court, and in the case of Commonwealth of Kentucky vs. Southern Pacific Company and the Board of Supervisors of Jefferson County No. 45770, now pending in the Jefferson Circuit Court, subject to exceptions for competency.

First. The Southern Pacific Company has not made a report to the State Board of Tax Commissioners of the State of New York, nor to any other Board or officers of said state charged with the duty of fixing the value of property for the purpose of assessment for taxation for any one or more of the years involved in this litigation; nor has said Southern Pacific Company been assessed, nor has it paid any taxes to the said State of New York for any or all of the years in question in this litigation.

Second. That the Southern Pacific Company, as such and in its own name and as a separate and independent corporation has paid no State taxes, ad valorem or franchise, to the State of California, for any of the years involved in this litigation, except as shown by the 9th stipulation.

Third. That the Southern Pacific Company like all other foreign corporations doing business in the State of California, is required to pay to the State of California, a license tax, the amount thereof being based on the amount of its capitalization. That for all and each of the years involved in this litigation, the Southern Pacific Company has paid this license tax to the State of Cali-

formia which tax so paid by the Southern Pacific Company amounts to \$250 annually and for each year.

Fourth. That the Southern Pacific Company, as such, does not make a report to the State Board of Equalization of California or to any other board or person or officer of said State charged with the duty of assessing property values. Nor is any report required under the laws of California, of said Company, showing where its principal place of business is located, and no such report is made by the Southern Pacific Company in said State.

Fifth. That the various proprietary or constituent companies paid taxes to the State of California for the years in litigation, on the assessed value of their property, including franchises. The franchise assessment is merged with the general property assessment, the franchise being treated as though one of the elements of value of the property.

Sixth. That the Southern Pacific Company has paid no ad valorem nor franchise tax to the State of Oregon for any one of the years involved in this litigation; but that said company is required under the laws of Oregon, like all other foreign corporations doing business in that State, to pay a license tax, based upon its capitalization, and that for each of the years involved in this litigation, it has paid to the State \$200 annually and for each year.

Seventh. That said Southern Pacific Company, for each of the years named in this litigation, annually made report and makes a report annually to the Railroad Commissioners of Oregon similar to the one attached to the letter of Governor Geo. E. Chamberlain to N. B. Hays, Attorney-General dated August 29, 1907, and it is stipulated by the parties hereto that the letter of the Railroad Commission of Oregon to Governor Geo. E. Chamberlain, dated August 28, 1907; the letter of said Chamberlain to

said Hays, dated August 29, 1907, the report of the Southern Pacific Company, to the Railroad Commission of the Southern Pacific Company to the Railroad Commission of Oregon made as of June 30, 1906; and the report of the Oregon and California Railroad Company to the Railroad Commission of Oregon made as of June 30, 1906 and attached to and referred to in said letters, be read as evidence in all the above styled actions between the parties hereto. That the original letters and the said reports may be filed in one case, and copies thereof filed in the other two cases, and the said copies to be read with the same effect as the originals.

Eighth. That the Southern Pacific Company has for the years named in this litigation, paid taxes of the Oregon and California Railroad Company to the State of Oregon and the subdivision thereof as shown by the letter of the Railroad Commissioner of Oregon to Governor George E. Chamberlain of date August 28, 1907 and attached to the report of said commission and made part of these stipulations, and according to the terms of the leases between the Oregon & California Railroad Company and the Southern Pacific Company, filed as an exhibit with the deposition of William Mahl; and the contents of said letters and reports shall be received and considered with the same effect as if contained in a form of deposition given by said parties in these cases.

Ninth. That the Southern Pacific Company has paid to the State of California for the years in controversy herein averaging \$27,000 per annum ad valorem taxes; that  $\frac{3}{4}$  of said taxes are paid upon real property situated and owned by said Southern Pacific Company in the State of California, and  $\frac{1}{4}$  of said taxes were assessed upon personalty owned by said Southern Pacific Company in California, and that for the year 1907 the said Southern

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Pacific Company paid to the said State of California \$34,300 in taxes,  $\frac{3}{4}$  of which sum was paid upon real property situated in said State and  $\frac{1}{4}$  on personal property.

Tenth. It is further agreed by and between said parties that the revenue and taxation laws of the State of New York, California, Oregon, Nevada, Utah, Arizona, New Mexico, Colorado, Texas, and Louisiana as shown in their public published statutes and acts, may be read in evidence and in proof of their laws respectively without further proof of the same on the hearing of each of said cases.

COMMONWEALTH OF KENTUCKY,

By JAMES BREATHITT, *Attorney General*,  
JAMES BREATHITT, *Attorney General*,  
N. B. HAYS, *Special Counsel*,  
*Attorneys for plaintiff.*

SOUTHERN PACIFIC COMPANY,

By HUMPHREY, DAVIE & HUMPHREY,  
*Attorneys for Southern Pacific Co.*

### RAILROAD COMMISSION OF OREGON.

#### *Commissioners:*

THOMAS K. CAMPBELL, *Cottage Grove, Chairman.*

OSWALD WEST, *Astoria.*

CLYDE B. AITCHISON, *Portland.*

GEORGE O. GOODALL, *Secretary.*

Salem, Oregon, August 28, 1907.

HON. GEORGE E. CHAMBERLAIN, *Governor, Building.*

DEAR SIR: Pursuant to your request of even date, enclosed herewith find duplicate copies of "Preliminary Report" made to this Commission by Oregon and California Railroad Company and Southern Pacific Company.

On the third page you will find stated the substance of the contract between the two companies under which the road and equipment of the Oregon and California Railroad Company is now being operated by the Southern Pacific Company.

You will note by the terms of the lease the Southern Pacific Company is to pay out of the earnings and income derived from the road all taxes and assessments.

About five years ago all assessments for property tax were made against Oregon and California Railroad Company. Beginning about that time some of the counties began assessing the roadbed and equipment to the Southern Pacific Company, and, for several years, the assessment was made to the California Railroad Company in some counties and to the Southern Pacific Company in others. For about three years past the assessments have been made uniformly to the Southern Pacific Company.

The Southern Pacific Company has been paying its license fees within this State.

Trusting that this answers your inquiry, we remain,

Very truly yours,

RAILROAD COMMISSION OF OREGON,

BY CLYDE B. AITCHISON,

CBA-FRD.

*Commissioner.*

## STATE OF OREGON.

## EXECUTIVE DEPARTMENT.

SALEM.

August 29th, 1907.

HON. N. B. HAYS, *Attorney General*,  
Frankfort, Kentucky.

DEAR SIR:

I am in receipt of your favor of the 22nd inst. In reply permit me to enclose you herewith a letter, I have just received from one of the Railroad Commissioners, covering your request for information as to the taxation of the Southern Pacific Railroad Company. Attached to his letter are preliminary reports of the Oregon and California Railroad Company and the Southern Pacific Company lessee.

I believe the latest litigation in Oregon by the Oregon and California Railroad Company but really by the Southern Pacific Company is the case of the Oregon and California Railroad Company versus Jackson County, 38 Oregon, 589, S. C. 64 Pacific Reporter, 307 and 65 Pacific Reporter 369.

I have the honor to remain,

Yours very respectfully,

GEO. A. CHAMBERLAIN.

## PRELIMINARY REPORT

OF

Southern Pacific Company.

To the Railroad Commission of Oregon.

Made as of June 30th, 1906.

I. Is report made by a corporation, Company, individual, association of individuals? As owner, or by a lessee, trustee or receiver (appointed by any court whatsoever?)

## OWNER.

II. Name of company, etc., making report, *in full*.

## SOUTHERN PACIFIC COMPANY.

If a corporation under the laws of what state or county organized?

## KENTUCKY.

Location of principal office, Beechmont, Ky.

## III.

Officers.	Name.	Post Office Address.
President.	E. H. Harriman.	New York
Secretary,	Alex Millar.	New York
Auditor,		
Treasurer,	N. T. Smith,	San Francisco
General Manager,		
Superintendent,		
Chairman of Board,		
General Counsel,		
Attorney in Oregon,	W. W. Cotton,	Portland, Or.
Chief Engineer,		
Chief Engineer in Oregon.		

Name and post office address of chief officer or managing agent, or attorney in fact, of company, etc.

Name J. P. O'Brien, Title Gen. Mgr., P. O. Address, Portland, Or.

Name and post office address of officer or agent or person within Oregon with whom correspondence should be had regarding this report and who should be addressed generally in communications, notices, etc., from the Railroad Commission of Oregon.

Name W. W. Cotton, Title Attorney, P. O. Address, Portland, Or.

IV. Nature of the business of the company, etc., making the report (whether a railroad, interurban railroad, union depot, terminal, express, car loaning, oil, tank line, sleeping car, freight or freight line, or street railroad.)

## RAILROAD.

State generally the terminals and length of lines, main and branch, of the company, etc., making the report, and the portion thereof in Oregon, furnishing also, if may be, a map which will assist in understanding the answer.

(If space below is insufficient, attach answer hereto, referring to this question.)

Lessee of Oregon and California Railroad Company's lines in Oregon.

Is the company, etc., a logging or other private railroad which does not do business as a common carrier?  
No.

Is the company, etc., engaged in the transportation of passengers elsewhere than solely within the limits of cities? Yes.

## V. CAPITAL STOCK.

Description.	Number of Shares Authorized.	Par Value Shares.	Total par Value Authorized.	Total amount issued and Outstanding.
Common .....	2,000,000	\$100.00	\$200,000,000	\$197,849,258.64
Preferred .....	1,000,000	\$100.00	\$100,000,000	\$ 39,569,700.00
Total .....	3,000,000	\$100.00	\$300,000,000	
Total Common and Preferred .....				\$237,418,958.64

## VI. BONDED DEBT. JUNE 30TH, 1906.

Class of bond or obligation.	Date of issue.	When due.	Amount Authorized.	Amount Outstand- ing.	Rate of Interest.	When Interest payable.
Mortgage bonds .....				\$39,200,500		
Collateral Trust Bonds						
Income Bonds						
Equipment Trust Obligations.						
Miscellaneous funded obligations (in- cluding Receiver's Receipts)						
Total.			See pages 33 to 36—Table No. 5			
Mortgage Bonds.			Twenty-second annual report of the			
Income Bonds.			Southern Pacific Company			
Miscellaneous.			June 30, 1906.			
Total.			This is all we have to refer to.			

(Bonds in sinking fund to be treated as outstanding.)

VII. Parent, lessor, or subsidiary companies. State generally contract or other relations with any other company, etc., leasing or to whom leased; whose stock is owned by company, etc., reporting, or which owns stock of company, etc., reporting, trackage rights, operating agreements or controlling relation (oral or written) or other arrangement of whatever form affecting the question being designed to develop generally and yet clearly the operating relations of the company, etc., making this report with all other companies, etc.

(If space below is insufficient, attach answer hereto properly identifying it.)

Road and all equipment of the Oregon & California Railroad Company leased to the Southern Pacific Company under date of August 1, 1893, for thirty-four (34) years at a yearly rental of Five Thousand (\$5,000) Dollars. Amount of the rental is to be appropriated by the O. & C. R. R. Co., to the expense of maintaining and keeping its corporate existence under the laws of Oregon.

The Southern Pacific Company is to operate the road and shall pay out of the earnings and income derived therefrom, cost of operating and incidental expenses connected therewith, pay all taxes and assessments, pay cost of insurance and in so far as affected, such amounts as it may become necessary to pay for damages to persons and property incurred in the course of operation, or on account of land purchases heretofore made; pay the expenses of repairing, maintaining, improving, adding to and keeping up the said leased railroads, with all their appurtenances and of maintaining, providing and keeping up in suitable condition, and repair rolling stock and equipment for carrying on as economically and profitably as may be the transportation business of said leased railroads, and so far as the same shall not be paid from rentals or income or proceeds of sale of lands, and the expenses of and connected with the lands of said first party, and perfecting the title thereto, and payment of taxes and assessments thereon, and the expenses of and connected with its land department; and after the payments and deductions aforesaid, the said lessee shall apply the residue of the amount of the net income and earnings of said railroads, to such extent as shall be required for the purpose, to the payment of the interest and any sinking fund contributions from time to time becoming

due and payable during the existence of this lease upon the now existing bonded indebtedness of the party of the first part, and such other bonded indebtedness of said party of the first part as may be created by said party of the first part with the assent of the party of the second part hereto.

Further agreed that second party shall at stated times each year pay to first party such balance, if any, of the net earnings or income received by second party from said leased premises for each year, as shall remain in its hands after all the payments herein before provided for, deducting whatever may be owing to it from the first party for advances, including any interest which may be due or owing from first party.

Provided further that if such balance of net earnings or income received by second party from said leased premises for any year shall exceed seven per cent per annum upon par value of the then existing preferred stock of first party, and six per cent upon par value of the then existing common stock, then the second party shall be entitled to retain to itself for its own use any and all excess of such balance of net earnings over and above the amount of seven per cent on preferred and six per cent on common stock.

Provided further that second party shall receive to use in the operation of said premises all fuel, rails, and materials and supplies then on hand, and likewise to collect and receive all sums due and owing to the first party for freights and passage money, including all sums in hands of agents or employes, or due from connecting roads; likewise sums due for back wages of employes, for fuel, rails and other materials and supplies for the business, or to connecting roads, or damages to persons or property in operating road, or other incidental expenses, shall be paid by second party.

It is also provided that in case the net earnings or income shall be insufficient in any year to pay in full current interest for the year, it shall be optional with second party whether or not to advance on account of first party the amount of the deficiency, and if it does make such advances, second party shall be entitled to six per cent interest per annum upon such advances until reimbursed, and shall be entitled to repay itself for such advances and interest at any time from any subsequent earnings and shall have a lien therefor upon the demised premises; and in case second party shall make any advances for new additions or improvements of the premises, or for keeping up corporate organization, or other incidental expenses not paid by first party, second party shall be entitled to six per cent from the making thereof until reimbursed.

Second party will, when requested by first party, guarantee the payment of principal and interest of all bonds of first party issued under mortgage from first party to Union Trust Company of N. Y. dated July 1, 1887.

VIII. State generally the past history of the company, etc., as to organization, reorganization, etc., giving the same information as to subsidiary companies.

Incorporated under the laws of Kentucky—Act of Legislature—Mch. 17, 1884.

Principal office at Beechmont, Ky.

Incorporated for purpose of unifying in management of lines of railroad extending from New Orleans, La., to San Francisco, Cal., to Portland, Or., and to Ogden, Utah.

State of Oregon,  
County of Multnomah.

I, the undersigned W. W. Cotton, attorney in Oregon  
(Name) (Official title)  
of the Southern Pacific Company being first duly sworn  
on my oath do say: That the foregoing returns and an-  
swers have been prepared under my direction, from the  
original books, papers and records of said company, that  
I have carefully examined the same, and that the same are  
true and correct, as shown by the books of the said com-  
pany, to the best of my knowledge and belief.

Signed: W. W. COTTON.

Subscribed in my presence and sworn to before me  
by the said W. W. Cotton this 29th day of April, 1907.

Signed: W. R. LITZENBERG,  
*Notary Public, for Oregon.*

## PRELIMINARY REPORT

OF

Oregon and California Railroad Company,

To the Railroad Commission of Oregon.

Made as of June 30-06. . . . . 190. . . . .

.....

I. Is report made by a corporation, company, individ-  
ual, association of individuals? As owner, or by a lessee,  
trustee or receiver (appointed by any court whatsoever?)

## OWNER.

II. Name of Company, etc., making report, *in full*.  
OREGON & CALIFORNIA RAILROAD COMPANY.

If a corporation, under the laws of what state or country organized?

Oregon—Mch. 17-1870.

Location of principal office, Portland, Oregon.

## III.

Officers	Name.	Post Office Address.
President,	E. H. Harriman,	New York
Secretary,	W. W. Cotton,	Portland
Auditor,		
Treasurer,	N. T. Smith, San Francisco, Cal.	
General Manager,	J. P. O'Brien,	Portland, Or.
Superintendent,		
Chairman of Board,	E. H. Harriman,	
Counsel	R. S. Lovett,	New York
Attorney in Oregon.	W. W. Cotton,	Portland
Chief Engineer,		
Chief Engineer in Oregon.		

Name and post office address of chief engineer or managing agent or attorney in fact, of company, etc., in Oregon: Name J. P. O'Brien. Title Vice President & Gen. Mgr. P. O. Address, Portland, Or.

Name and post office address of officer or agent or person within Oregon with whom correspondence should be had regarding this report and who would be addressed generally in communications, notices, etc., from the Railroad Commission of Oregon.

Name W. W. Cotton, Title Secretary, P. O. Address, Portland, Or.

IV. Nature of the business of the company, etc., making the report (whether a railroad, interurban railroad, union depot, terminal, express, car loaning, oil, tank, line, sleeping car, freight or freight line, or street railroad.)

### RAILROAD.

State generally the terminals and length of lines, main and branch, of the company, etc., making the report, and the portion thereof in Oregon, furnishing also, if may be, a map which will assist in understanding the answer.

(If space below is insufficient attach answer hereto, referring to this question.)

Portland, Or., to California Line .....	366.61
Portland to Corvallis, Or. ....	96.52
Woodburn to Natron, Or. ....	92.96
Albany Junction to Lebanon, Or. ....	11.50
Portland to Airlie, Or. ....	73.52
Sheridan Junction to Sheridan, Or. ....	7.18
Mohawk Junction to Wendling, Or. ....	15.95
	<hr/>
	664.24

Leased from Northern Pacific Terminal Co., trackage through terminal grounds at Portland, Or. .... .80

Is the company, etc., a logging or other private railroad which does not do business as a common carrier?  
No.

Is the company, etc., engaged in the transportation of passengers elsewhere than solely within the limits of cities? Yes.

## V. CAPITAL STOCK.

Description.	Number of Shares Authorized.	Par Value Shares.	Total par Value Authorized.	Total amount issued and Outstanding.
Common	\$70,000	\$100.00	\$ 7,000,000	\$ 7,000,000
Preferred	120,000	\$100.00	\$12,000,000	\$12,000,000
Total	190,000	\$100.00	\$19,000,000	\$19,000,000
Total common and preferred.				

## VI. BONDED DEBT.

Class of bond or obligation.	Date of issue.	When due.	Amount Authorized.	Amount Outstanding.	Rate of Interest.	When Interest payable.
First Mortgage coupon registered.		July 1 1927		\$18,224,000	5%	January July
		"		11,000		Jan'y. & July.
Collateral Trust Bonds						
Income Bonds			See 5th Company Table No. 5			
Equipment Trust Obligations			Page 34 Twenty-second Annual Report of the Southern Pacific Company			
Miscellaneous Funded Obligations (including Receiver's Receipts)			June 30, 1906.			
Total			All we have.			
Mortgage Bonds,						
Income Bonds,						
Miscellaneous,						
Total,				\$18,235,000		

(Bonds in sinking fund to be treated as outstanding.)

VII. Parent, Lessor, or Subsidiary Company. State generally contract or other relations with any other company, etc., leasing or to whom leased; whose stock is owned by company, etc., reporting, or which owns stock of company, etc., reporting; trackage rights, operating agreements or controlling relation (oral or written) or

other arrangement of whatever form affecting either the operation of the line of the company, etc., reporting, or of some other line by it—the question being designed to develop generally and yet clearly the operating relations of the company, etc., making this report with all other companies, etc.

(If space below is insufficient, attach answer hereto, properly identifying it.)

Road and all equipment of the Oregon & California Railroad Company leased to the Southern Pacific Company under date of August 1, 1893, for Thirty-four (34) years at a yearly rental of Five Thousand (\$5,000) Dollars. Amount of the rental is to be appropriated by the O. & C. R. R. Co., to the expense of maintaining and keeping up its corporate existence under the laws of Oregon.

The Southern Pacific Company is to operate the road and shall pay out of the earnings and income derived therefrom, cost of operating and incidental expenses connected therewith, pay all taxes and assessments, pay cost of insurance and in so far as affected, such amounts as it may become necessary to pay for damages to persons and property incurred in the course of operation, or on account of land purchases heretofore made; pay the expenses of repairing, maintaining, improving, adding to and keeping up said leased railroads, with all their appurtenances, and of maintaining, providing and keeping up in suitable condition, and repair rolling stock and equipment for carrying on as economically and profitably as may be the transportation business of said leased railroads, and so far as the same shall not be paid from rentals or income or proceeds of sale of lands, and the expenses of and connected with the lands of said first party, and perfecting the title thereto, and payment of taxes and assessments thereon, and the expenses of and con-

nected with its land department; and after the payments and deductions aforesaid, the said lessee shall apply the residue of the amount of the net income and earnings of said railroads, to such extent as shall be required for the purpose, to the payment of the interest and any sinking fund contributions from time to time becoming due and payable during the existence of this lease upon the now existing bonded indebtedness of the party of the first part, and such other bonded indebtedness of said party of the first part as may be created by said party of the first part with the assent of the party of the second part thereto.

Further agreed that second party shall at stated time each year pay to first party such balance, if any, of the net earnings or income received by second party from said leased premises for each year, as shall remain in its hands after all the payments herein before provided for, deducting whatever may be owing to it from the first party for advances, including any interest which may be due or owing from first party.

Provided further that if such balance of net earnings or income received by second party from said leased premises for any year shall exceed seven per cent per annum upon par value of the then existing preferred stock of first party, and six per cent upon par value of the then existing common stock then the second party shall be entitled to retain to itself for its own use any and all excess of such balance of net earnings over and above the amount of seven per cent on preferred and six per cent on common stock.

Provided further that second party shall receive to use in the operation of said premises all fuel, rails, and materials and supplies then on hand, and likewise to collect and receive all sums due and owing to the first party

for freights and passage money, including all sums in hands of agents or employes, or due from connecting roads; likewise sums due for back wages of employes, for fuel, rails and other materials and supplies for the business, or to connecting roads, or damages to persons or property in operating road, or other incidental expenses, shall be paid by second party.

It is also provided that in case the net earnings or income shall be insufficient in any year to pay in full current interest for the year, it shall be optional with second party whether or not to advance on account of first party the amount of the deficiency, and if it does make such advances, second party shall be entitled to six per cent interest per annum upon such advances until reimbursed, and shall be entitled to repay itself for such advances and interest at any time from any subsequent earnings and shall have a lien therefor upon the demised premises; and in case second party shall make any advance for new additions or improvements of the premises, or for keeping up corporate organization, or other incidental expenses not paid by first party, second party shall be entitled to six per cent from the making thereof until reimbursed.

Second party will, when requested by first party, guarantee the payment of principal and interest of all bonds of first party issued under mortgage from first party to Union Trust Company of N. Y., dated July 1, 1887.

VIII. State generally the past history of the company, etc., as to organizations, reorganization, etc., giving the same information as to subsidiary companies.

Incorporated under the laws of Oregon, March 16, 1870. Since that time has filed various supplemental Articles of Incorporation (which are of record). There has never been any reorganization of the company as such

State of Oregon,  
County of Multnomah:

I, the undersigned, W. W. Cotton, Secretary.....  
(Name) (Official Title)

of the Oregon and California Railroad Company, being first duly sworn, on my oath do say: That the foregoing returns and answers have been prepared under my direction, from the original books, papers and records of said company, that I have carefully examined the same, and that the same are true and correct, as shown by the books of the said company.

Signed: W. W. COTTON.

Subscribed in my presence and sworn to before me  
by the said W. W. Cotton this 29th day of April, 1907.

Signed: W. R. LITZENBERG,  
*Notary of Public for Oregon.*

## FRANKLIN CIRCUIT COURT.

Filed Dec. 13, 1907.

COMMONWEALTH OF KENTUCKY, - - - - - *Plaintiff.*

*vs.* AGREEMENT.

SOUTHERN PACIFIC COMPANY, S. W. HAGER, ET AL.,  
*Defendants.*

It is hereby agreed, by and between the Commonwealth of Kentucky, N. B. Hays, Attorney General, D. L. Hardesty, Revenue Agent, for the State of Kentucky, Jas. H. Hazelrigg, J. Smith Hays, and John W. Ray, his attorneys of the one part, and the Southern Pacific Company and Alex P. Humphrey, its attorney of the other part, that a true copy of the depositions taken or that may be taken in the above styled action, wherein the Commonwealth of Kentucky is plaintiff and the Southern Pacific Company, S. W. Hager, et al are defendants, now pending in the Franklin Circuit Court, Franklin County, Kentucky, may be filed in and read as the depositions of all persons so deposing in the following cases, to-wit:— The case of Commonwealth against the Southern Pacific Company, Harry J. Weaver, et al as the Board of Supervisors of Jefferson County for 1906 No. 45770, pending in the Jefferson Circuit Court of Jefferson County, Kentucky; the case of the Commonwealth of Kentucky against the Southern Pacific Company now pending in the Jefferson County Court for a new trial and the assessment of the omitted property of said company for the year 1906, No. 2607, and in the two cases of the Common-

wealth of Kentucky against the Southern Pacific Company now pending in the Kentucky Court of Appeals Nos. 397 and 398, September Docket 1907, if they should be reversed and remanded for further proceedings in the Jefferson County and Circuit Court, and that this agreement may be filed in the Franklin Circuit Court, and when such copy of said depositions with a copy of this agreement attached thereto, shall be filed in all or any of said cases, they may be read as evidence on behalf of either party with the same effect as if taken in such case, and the parties hereto waive all objections to said depositions except as to the competency of such evidence.

This November 16, 1907.

COMMONWEALTH OF KENTUCKY,

By N. B. HAYS,

N. B. HAYS,

*Attorney General.*

JAS. H. HAZELRIGG, J. SMITH

HAYS, JOHN W. RAY,

---

of the one part.

SOUTHERN PACIFIC CO.

PER ALEX P. HUMPHREY,

---

of the other part.

## FRANKLIN CIRCUIT COURT.

Filed April 7, 1908.

COMMONWEALTH OF KENTUCKY, - - - - Plaintiff,

vs.

DEPOSITION.

SOUTHERN PACIFIC COMPANY AND BOARD OF

VALUATION AND ASSESSMENT, - - - Defendants.

The deposition of Polk Lafoon taken on behalf of the defendant, the Southern Pacific Company, Alex. P. Humphrey appearing for the defendant, and N. B. Hays and Jno. W. Ray appearing for the plaintiff.

The witness, being first duly sworn, testified as follows:

By Alex. P. Humphrey, Counsel for Southern Pacific Company.

1. Q. State you name, residence, and occupation.

A. My name is Polk Lafoon, Jr. My residence, Frankfort, Kentucky, and my occupation is that of Secretary to the State Board of Valuation and Assessment.

2. Q. Will you please state whether you have examined the records of the Auditor's Office with a view of finding out what franchise taxes and organization taxes have been paid into the State Treasury by the Southern Pacific Company, and if so, will you please state what those payments have been?

A. The record of this office discloses that the Southern Pacific Company has paid in taxes as follows: 1893, \$4250; 1894, \$4250; 1895, \$4250; 1896, \$4250; 1897, 5250; 1898, 5250; 1899, \$5250; 1900, \$4750; 1901, \$4750; 1902, \$4750; 1903, \$5000; 1904, \$5000; 1905, \$5000; 1906, \$5000; 1907, \$11870.94; 1908, \$11870.94; and in organization taxes \$76,000, which was paid in 1905 \$40,000, and in 1907, \$36,000.

3. Q. Will you please look at the records of the Auditor's Office and state what is the net valuation of the

franchise of the Louisville & Nashville Railroad Company, giving also the total mileage of that company, its mileage in Kentucky, gross income in Kentucky, and capital stock.

(To which plaintiff objects, because irrelevant and incompetent.)

A. The net franchise valuation of the Louisville & Nashville Railroad Company for the year 1908, based upon its report as made to the Auditor as of June 30, 1907, is \$8,701,560. The report discloses that they have \$60,000,000 of capital stock, and that their gross income for Kentucky upon a mileage basis is approximately \$14,078,218. The total mileage of the company, as stated in the report, is 6890.57, of which 1643.40 is in Kentucky.

4. Q. Will you please answer the same question as to the Illinois Central Railroad Company?

(Plaintiff objects, because irrelevant and incompetent.)

A. The net franchise valuation of the Illinois Central Railroad Company for the year 1908, based upon its report to the Auditor as of June 30, 1907, is \$4,437,440. Their total capital stock as disclosed by the above indicated report is \$95,040,000. Their gross receipts for Kentucky for the year ending June 30, 1907, was \$7,086,368.53. The total mileage of this company is 4274.15, of which 553.63 is in Kentucky.

5. Q. Please answer the same question as to the Chesapeake & Ohio Railway Company?

(Plaintiff objects, because irrelevant and incompetent.)

A. The net franchise valuation of the Chesapeake & Ohio Railway Company for the year 1908, based upon its report to the Auditor as of June 30, 1907, is \$2,739,425. The capital stock of this company, as disclosed by the above indicated report, is \$62,799,100. The gross income for Kentucky as per the mileage in and out of the State is \$7,321,578. The total mileage is 1826 miles, of which 536 miles is in Kentucky.

6. Q. Answer the same question as to the Nashville, Chattanooga & St. Louis Railway Company?

(To which the plaintiff makes same objection.)

A. The net franchise valuation of the Nashville, Chattanooga & St. Louis Railway Company for 1908, based upon its report to the Auditor as of June 30, 1907, is \$345,780. The total capital stock of this company is \$10,000,000. Gross income of this company in Kentucky upon a mileage basis is \$489,538. The total mileage of the company is 1172.42, of which 57.63 is in Kentucky.

7. Q. Mr. Lafoon, the Louisville & Nashville Railroad Company, I believe, is a Kentucky corporation, and the Illinois Central Railroad Company an Illinois corporation, the Chesapeake & Ohio a Virginia corporation, and the Nashville, Chattanooga & St. Louis Railway Company a Tennessee corporation. Now will you please answer the same question as to the Louisville & Atlantic Railroad Company, which, I believe, is a Kentucky corporation and has its lines entirely within the State?

(To which plaintiff objects, because irrelevant and incompetent.)

A. The net franchise of the Louisville & Atlantic Railroad Company for the year 1908, based upon its report to the Auditor as of June 30, 1907, is \$101,100. The capital stock \$1,000,000. The gross income is \$322,043.10. Its total mileage is 101.10, all of which is in the State of Kentucky.

8. Q. Now, will you please answer the same question as to the Western Union Telegraph Company?

(To which plaintiff objects.)

A. The net franchise valuation of the Western Union Telegraph Company for the year 1907, based upon its report to the Auditor as of June 30, 1906, was \$652,688. The total authorized capital stock of this company as disclosed by their report is \$100,000,000. Their gross income is not given. Their total mileage is 1,172,748 miles, of which 11,809 miles is in the State of Kentucky.

9. Q. How long have you been the Secretary of the State Board of Valuation and Assessment?

A. About eight years I have been associated with that Board.

10. Q. Will you please state generally whether the method pursued in ascertaining the franchise value of these various companies, of which I have inquired, is the method which has been pursued substantially since you have been Secretary of the Board?

(To which the plaintiff objects.)

A. Yes, sir; the same methods, practically, have been in use ever since I have been associated with the Board.

11. Q. I have asked you only as to certain illustrated corporations. Will you please state whether the method disclosed as to these corporations is applied substantially as to other similar corporations?

(To which plaintiff objects.)

A. Yes, sir.

Cross-examination by Mr. Jno. W. Ray.

1. Q. In giving the amounts of franchise tax paid by the Southern Pacific Company for the several years, I will ask you if it is not true that up to the last two items given they did or not pay taxes upon the assessed franchise value of an even \$1,000,000 each year.

A. They paid upon an assessed value \$1,000,000 for each year, with an exception of the last two.

2. Q. As the Secretary or Clerk of that Board, I will ask you whether or not it is true that it largely devolved upon you to make the calculations upon which the Board arrived at the franchise of the defendant corporations?

A. Yes, sir.

3. Q. I will ask you if you can now take a copy of the report of the Southern Pacific Company as of September, 1904, copy of which is filed in this suit, and will you make and file with the stenographer a calculation which will show the franchise value of \$1,000,000, according to the usual method in use at that time?

A. You understand, of course, that the Board had no one fixed method in arriving at the value of the franchise of the several companies which were assessed. In this instance no calculation was made. The valuation of \$1,000,000 was arbitrarily made by the Board.

4. Q. So long as you was Secretary of the Board, is it not true that the valuation of \$1,000,000 fixed by the Board on the Southern Pacific Company, saving the last two years mentioned, was arbitrarily fixed at \$1,000,000, and without any reference to calculations, or reports, or values, or income, or mileage?

A. Of course, I can not show what calculations the individual members of the Board made upon these reports, because the reports were subject to their inspection at all times, but I will say that whether they figured or not, or calculated or not on the earning capacity of the stocks, bonds, or other assets of the company, a \$1,000,000 valuation was made just the same.

5. Q. Did you not know that the valuation of a \$1,000,000 franchise value of the Southern Pacific Company was made by the Board in pursuance of an order entered of record upon their minutes, providing for such a valuation, and that it would remain at that figure practically indefinitely?

A. Yes; I did know from year to year that the Board made a valuation of a \$1,000,000, and it is so recorded in the minutes of the Board, and, with exceptions of the two years which we have designated, several times the valuation was always the same, \$1,000,000.

6. Q. Mr. Lafoon, is it not true that the assessment of the franchise of the Southern Pacific Company at a \$1,000,000 was made in pursuance to a record, order, or resolution of the Board as follows:

"On January 17, 1901, the Board met and it was agreed between the Board and the Southern Pacific Company that the franchise of said company should be \$1,000,000, and should remain at the said amount so long as

the business of the company did not increase. All members of the Board present."

And that after that order was entered there never was, in fact, any sort of a calculation or estimate made from their reports, but that the Board annually made and fixed it arbitrarily at \$1,000,000?

A. As before stated, I do not know whether the individual members of the Board ever examined the reports of the Southern Pacific Company for any of the years in question after this order was entered. The reports have always been subject to their inspection at any and all times. As to whether or not they examined them, I know not, but I do know and I state from the record that the valuation for all of the years in question, save the last two, was \$1,000,000. It was the custom of the members of the Board to take the reports filed by all the railroad companies and examine them presumably in their offices before the Board met for the purpose of valuation. For this reason I am unable to state whether or not they ever figured upon a report of the Southern Pacific Company for any of the years. The report was always in the same box with the reports of the other railroad companies.

7. Q. Mr. Lafoon, on the report of the Chesapeake & Ohio Railroad Company and the jacket showing the assessment of the franchise, I wish you would say what was the franchise assessed against the Chesapeake & Ohio Railroad Company in Kentucky, which appears from the report to be a separate corporation.

A. The valuation for the year 1908 of this company is based upon the report of the Chesapeake & Ohio Railway Company, this report having included therein the earnings and expenses of all of its subsidiary companies, of which, I take it, the Chesapeake & Ohio Railway Company of Kentucky is a subsidiary company.

8. Q. I will ask you, Mr. Lafoon, to file as part of the deposition report of June 30, 1907, from which you have quoted, including therein the endorsement on the jacket

showing the action of the Board, and also of the Louisville & Nashville Railroad Company, and the Illinois Central Railroad Co., and the Nashville, Chattanooga & St. Louis Railroad Co., and the Louisville & Atlantic Railroad Company?

A. I will, and mark them respectively:  
 "Polk 1," "Polk 2," "Polk 3," "Polk 4," "Polk 5."

Further the deponent sayeth not.

POLK LAFOON, JR.

COMMONWEALTH OF KENTUCKY }

COUNTY OF FRANKLIN }

I, Louise Sorg, Notary Public within and for the above-named county and State, do certify that the foregoing deposition of Polk Lafoon was taken before the on April 1, 1908, in the office of the Auditor of Public Accounts; that said witness was first duly sworn before giving it, and same was written by me in his presence, read to and subscribed by him in my presence. The plaintiff was represented by Jno. W. Ray and N. B. Hays, and the defendant by Alex. P. Humphrey, Attorney.

In the testimony whereof, I have hereunto set my hand this the 6th day of April, 1908.

LOUISE B. SORG,

*Notary Public For Franklin Co., Kentucky.*

My commission expires February 4, 1912.

"Polk 1."

Form A8. Miscellaneous Corporations and Railroads.

LOUISVILLE & NASHVILLE RAILROAD CO.

Louisville, Ky.

REPORT FOR

JUNE 30, 1907.

Capital .....	
Surplus .....	
Undivided Profits .....	
All other assets .....	
Total Capital .....	\$36,873,771.00
Less Tangible Property, etc. ....	28,172,211.00
Franchise .....	8,706,560.00
Tax .....	43,507.80
When Corporation was first notified .....	March 11, 1908

Report No. 34.

A copy attest.

POLK LAFFOON, JR.

Commonwealth of Kentucky v. Southern Pacific Co.  
Filed April 7, 1908.

BEN MARSHALL, *Clerk.*

"Polk 1."

REPORT

OF THE

LOUISVILLE & NASHVILLE RAILROAD CO.

TO THE

AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY.

JUNE 30, 1907.

ARTICLE IV, SUBDIVISION 1.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every railway company or corporation, and guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace-car company, dining-car company, sleeping-car company, chair-car company, and every other like company, corporation or association, also every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall,

in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town or taxing district, where its franchise may be exercised. The Auditor, Treasurer and Secretary of State are hereby constituted a Board of Valuation and Assessment for fixing the value of said franchise, except as to turnpike companies, which are provided for in section 1 of subdivision 4 of this article, the place or places where such local taxes are to be paid by other corporations on their franchise, and how apportioned, where more than one jurisdiction is entitled to a share of such tax, shall be determined by the Board of Valuation and Assessment, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time, as the business of the board may require. It shall be the duty of the Attorney-General, when requested by the Board of Valuation and Assessment, to attend said board at its meetings and advise with same in its proceedings.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, shall annually between the thirtieth day of June and the first day of October, make and deliver to the Auditor of Public Accounts of this State a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz.:

Name of corporation, Louisville & Nashville Railroad Co. for entire line, in and out of the State of Kentucky.

Name the principal place of business of the corporation, company or association you represent, Louisville, Ky.

Give the name and official position of the officer making this report. Name, Chas. Haydon, position, Comptroller.

The kind of business in which the said corporation, company or association is engaged is that of a common carrier, engaged in the business of transporting freight, passengers and mail and express matter.

The amount of capital stock, preferred and common, of the said corporation, company or association as of date June 30, 1907. Preferred, none; Common, \$60,000,-000.00.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or association, on June 30, 1907. Preferred, none; Common, 600,000 shares.

Amount of capital stock, as above, paid up, \$60,000,-000; Par value of the preferred stock, as above, none; Par value of the common stock, as above, \$60,000,000; Real value of the stock, as above. Preferred, none; Common, unable to state.

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before June 30, 1907. Don't know.

\$.....per share.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company or association, on June 30, 1907. Surplus fund, \$.....; undivided profits, \$.....; value of all other assets, \$14,940,422.31, which includes surplus fund and undivided profits.

State the total amount of indebtedness, as principal, of the said corporation, company or association, on June 30, 1907. (A), Bonded indebtedness, \$128,549,500; Rate of interest paid, 3, 4, 4½, 5, 6 and 7 per cent; Other indebtedness, \$10,466,896.55; Amount of interest paid, \$.....; Total indebtedness, \$139,016,396.55.

State separately the total amount of gross and net earnings, or income of the said corporation, company or association, including interest on investments, and income from all other sources for twelve months next be-

fore June 30, 1907. Gross earnings, \$48,263,945.20, Misc. income, \$751,623.90 (B), Investments, \$1,263,781.14 (C), Gross earnings or income, \$50,279,350.24.

Less expenses,

Operating expenses .....	\$35,781,302 54
Wages, taxes .....	1,138,832 36
Interest on bonded debt.....	5,772,247 67
Dividends, .....	3,600,000 00
Rents paid for lease of roads, enlarge- ment of plant .....	895,361 60
Other expenses .....	241,084 17
Total .....	<hr/> \$47,428,828 34 <hr/>

Net income ..... \$2,850,521 90

Amount and kind of tangible property in this State owned by the said corporation, company or association, on September 1, 1907.

Amount of tangible property, \$.....

Kind of tangible property .....

State where the tangible property aforesaid is situated, assessed or liable to assessment.

County .....; City .....;  
Town .....; number or name of  
taxing district or precinct.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale.

\$.....

(This information has been furnished to the Auditor of Public Accounts by the president of this Company, in his return dated July 1, 1907.)

Specify in detail the entire length of line or lines operated, owned, leased or controlled, in each county, city, town and taxing district in this State. [Give the length of line in each county, town or taxing district separately.]

This information has been furnished to the Auditor of Public Accounts, in the form requested, by the President of this Company, in his letter dated July 1, 1907.

(A) Included in these bonds are bonds on a tract of land in St. Louis amounting to \$617,000.00. It is submitted that this mortgage debt not being in any part of the Company's railroad, should not be considered for the purpose of arriving at the value of the franchise of the railroad Company.

(B) Included in this item are rents from railroad properties, and an amount of \$18,629.47, which represents rental derived from real property in the City of St. Louis, Mo. It is submitted that the rent from this land located in the State of Missouri should not be considered as a part of the income of this Company for the purpose of arriving at the value of its franchise as a Railroad Company.

(C) Included in income from Investments are the following dividends on stock of Kentucky corporations:  
 Kentucky Public Elevator Stock...\$1,680.00  
 Central Transfer R'y & Storage Co.

Stock—P .....	1,000.00	
		\$2,680.00

Under Section 4085, Kentucky Statutes, this Company should not be taxed in any form on account of its ownership of the stock in the Companies referred to, and, therefore, the dividends from that stock should not be considered as a part of the income of this Company, for the purpose of taxation. Indeed, no part of this income from investments has any necessary or proper connection in any manner with the value of the franchise of the Railroad Company and throws no light upon that value from the standpoint of earning capacity or otherwise. Any private individual without any franchise whatever could own these securities and derive exactly the same income therefrom. Of course, full taxes, are paid on the

properties represented by these various securities where the properties are situated.

In general it is submitted that for the purpose of valuing the franchise of the Company as a Railroad Company, the only elements of income to be looked to are the earnings from the road operated and the rents and profits from the roads owned, leased or controlled.

(D) Included in this interest on bonded debt is \$30,850.00 interest on the mortgage bonds on the real property in St. Louis, Mo. above referred to, which it is submitted should not be regarded as a part of the interest on bonded debt of the Railroad Company for the purpose of arriving at the value of its franchise as a Railroad Company.

State the total mileage operated, owned, leased or controlled in this State, 1,643.40 miles.

Also the total length of the entire line or lines, as above, operated, owned, leased or controlled, as above, elsewhere than in this State, 5,247.17 miles, which added to the mileage in Kentucky makes a total mileage operated, owned, leased or controlled of 6,890.57.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in this State for twelve months next before June 30, 1907. Statistics are not kept in such form as to furnish this information. Gross income, \$.....; Net income or earnings, \$.....

State the entire gross and net income or earnings received by the said corporation, company or association, on business done in this State and elsewhere for the same length of time. Gross income, \$50,279,350.24; Net income or earnings, \$2,850,521.90.

CHAS. HAYDON,  
*Comptroller.*

COMMONWEALTH OF KENTUCKY, }  
 JEFFERSON COUNTY. } SS.:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Chas. Haydon, Comptroller whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 30th day of September, 1907.

GEORGE E. ZULROD,  
*Notary Public.*

Filed April 7, 1908.

BEN MARSHALL, *Clerk.*

LOUISVILLE & NASHVILLE RAILROAD CO.

Supplemental report of the Louisville & Nashville Railroad Company to the Auditor of Public Accounts of Kentucky as of June 30, 1907, for assessment of franchises.

On reference to the original report as rendered, it will be seen that an item of Miscellaneous Income is shown, \$751,623.90. Below is shown the detail making up this item:

Rent, Clarksville & Princeton Division.....	\$12,039.70
Rent, Paducah & Memphis Division.....	206,363.65
Rent, St. Louis property.....	18,629.47
Rent, equipment .....	275,943.56
Rent, various sources .....	46,049.53
Interest from various sources .....	192,597.99
	<hr/>
	\$751,623.90

An item is also shown of Income from investments, \$1,263,781.14.

The following statements show the stocks and bonds on which this item of income accrues, par value of each, the rate of income, amount of income or dividends received, and ledger valuation:

### STOCKS OWNED.

#### A—RAILWAY STOCKS.

Name.	Total Par Value.	Rate.	Income or Dividend Received.	Valuation.
Atlanta Belt Line Co----	\$200,000.00	4%	\$8,000.00	\$200,000.00
Augusta Belt R'y-----	32,500.00	---	-----	32,275.67
Augusta & Summerville Rd -----	25,000.00	---	-----	9,527.50
Augusta Union Station Co	12,500.00	---	25.00	625.00
Bay Minette & Ft. Mor- gan R -----	50,000.00	---	-----	5.00
Central Transfer R'y & Storage Co -----	25,000.00	4%	1,000.00	11,354.65
Chicago, Indp. & Louis. R'y preferred -----	1,936,700.00	4%	77,468.00	-----
Chicago, Indp. & Louis. R'y common -----	4,903,450.00	3%	147,103.50	6,008,533.62
Clear Fork Railroad----	10,000.00	---	-----	10.00
Elkton & Guthrie Rd----	17,275.00	---	-----	15,175.00
Goodlettsville & Green- brier Road -----	10,000.00	---	-----	10.00
Long Branch R. R.-----	50,000.00	---	-----	10.00
Louisville, Henderson & St. L. common-----	1,631,385.50	---	-----	263,834.23
Louisville, Henderson & St. L. preferred-----	776,081.03	---	-----	255,954.50
Louisville & Nashville Terminal Company ---	100,000.00	---	-----	20.00
Madisonville, Hartford & Eastern Road -----	50,000.00	---	-----	10.00
Memphis Terminal Co----	50,000.00	---	-----	5.00
Milledgeville Railway ---	15,000.00	---	-----	17,500.00
Missouri & Illinois Bridge Belt Co -----	17,000.00	---	-----	17,000.00
Monroe Railroad -----	50,000.00	---	-----	5.00
Morganfield & Atlanta Rd	50,000.00	---	-----	10.00
Nashville & Decatur Rd.	1,979,600.00	---	-----	1,964,826.01
Nashville, Chattanooga & St. Louis R'y-----	7,177,600.00	4%	394,768.00	6,597,525.25

Name.	Total Par Value.	Rate.	Income or Dividend Received.	Valuation
Owensboro & Nashville Rd. common -----	\$1,156,524.99	---	-----	\$308,330.25
Pine Mountain R. R.-----	10,000.00	---	-----	10.00
S. & N. Alabama Rd. preferred -----	2,000,000.00	---	-----	5.00
S. & N. Alabama Rd. common -----	1,133,433.33	---	-----	5.00
Terminal R. R. Assn. of St. L. -----	205,800.00	---	-----	10.00
Swan Creek R'y-----	50,000.00	---	-----	10.00
Woodstock & Blocton Railway -----	120,000.00	---	\$6,000.00	120,348.47
Memphis Road Terminal Co -----	10,000.00	---	-----	10.00
Sundry other stocks-----	8,300.00	---	-----	4,160.08
Total -----	\$23,863,149.85	---	\$634,364.50	\$15,827,105.23

## B—OTHER STOCKS.

Name.	Total Par Value.	Rate.	Income or Dividend Received.	Valuation.
Atlantic Express Co.-----	\$25,900.00	---	-----	\$25,900.00
Colossal Cavern Co.-----	25,000.00	---	-----	10.00
Gulf Transit Co.-----	82,300.00	---	-----	10.00
Ky. Public Elev. Co. com- mon -----	28,000.00	6%	\$1,680.00	28,000.00
Louisville Property Co.--	50,000.00	---	-----	10.00
Republic Iron & Steel Co. preferred -----	46,100.00	15%	6,915.00	48,679.90
Republic Iron & Steel Co. common -----	46,100.00	---	-----	15,706.13
St. L. & Tenn. River Packet Co -----	27,700.00	3%	8,310.00	31,553.31
Tenn. River Packet Co.--	25,200.00	---	-----	10.00
Whitley Coal Co.-----	48,300.00	---	-----	10.00
Total -----	\$404,600.00	---	\$16,905.00	\$149,889.34
Grand Total A and B.--	\$24,267,749.85	---	\$651,269.50	\$15,976,994.57

# BONDS OWNED. A—RAILWAY BONDS.

Name.	Total Par Value.	Rate.	Income or Interest Received.	Valuation.
Bay Minette & Ft. Morgan Rd. First Mortgage	\$225,000.00	4%	-----	\$225,000.00
Carrollton & Worthv. Rd. 5% -----	24,100.00	5%	\$1,111.62	21,985.00
Charleston Terminal Co. 50 year Gold -----	300,000.00	4%	12,000.00	276,800.00
Central Trans. R'y & Storage Co -----	10,000.00	5%	500.00	10,000.00
Elkton & Guthrie Rd. 1st Mort -----	25,000.00	5%	1,250.00	25,000.00
Louisville & Nashville Terminal Co. 50 year Gold -----	2,535,000.00	4%	101,359.35	2,535,000.00
Monroe Road Co. 1st Mort. 4% -----	34,000.00	4%	1,360.00	46,741.47
Nashville, Chattanooga & St. L. R'y Issue -----	66,000.00	6%	-----	-----
	-----	5	3,320.00	66,000.00
Owensboro & Nashville R'y First Mortgage -----	1,200,000.00	6%	-----	1,200,000.00
South & North Alabama Road 5% Consol -----	4,753,000.00	5%	237,650.00	4,753,000.00
South & North Alabama Road Imp. 5% -----	1,920,000.00	5%	96,000.00	1,920,000.00
South & North Alabama Road 2d Mortgage 6% -----	2,000,000.00	6%	120,000.00	2,000,000.00
Total -----	\$13,092,100.00	---	\$574,550.97	\$13,079,526.47

## B—OTHER BONDS.

Name.	Total Par Value.	Rate.	Income or Interest Received.	Valuation.
City of Bowling Green 5%	\$3,000.00	5%	\$150.00	\$3,000.00
Jackson Lumber Co. 5% -----	550,000.00	5, 6%	30,166.67	536,200.00
Muhlenburg County, Ky., 5% Refunding -----	25,000.00	5%	1,250.00	25,000.00
National Coal & Iron Co. 5% -----	71,000.00	5%	3,675.00	71,000.00
Sloss Iron & Steel Co 1st Mort -----	43,000.00	6%	2,580.00	34,400.00
Sundry other Bonds and Scrip -----	2,930.94	---	139.00	2,930.94
Total -----	\$694,930.94	---	\$37,960.67	\$672,530.94
Grand total A and B -----	\$13,787,030.94	---	\$612,511.64	\$13,752,057.41
Total income from stocks -----				\$651,269.50
Total income from bonds -----				612,511.64

Grand total income from investments, as shown by  
original report to Auditor ----- \$1,263,781.14

In order that a full financial report of the Company may be before the State Board of Valuation and Assessment, there is also attached hereto, marked Exhibit "A" a copy of the General Balance sheet of the Company as returned to the Railroad Commission of Kentucky in the report for the year ended June 30, 1907.

The original report as rendered is not altered but the Company submits this additional report for consideration by the Board.

CHAS. HAYDON,  
*Comptroller.*

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COMMONWEALTH OF KENTUCKY, }  
JEFFERSON COUNTY. } SS.:  
}

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Charles Haydon, whose signature is attached hereto, and made oath that the statements made in the foregoing Supplemental Report to the Auditor of Public Accounts of Kentucky are true and correct to the best of his knowledge and belief.

Given under my hand this 7th day of March, 1908.

G. W. B. OLMSTEAD,  
*Notary Public, Jefferson County, Kentucky.*

My commission expires January 29, 1910.

## EXHIBIT "A"

## COMPARATIVE GENERAL BALANCE SHEET.

June 30, 1906.

Item.	Total.	Assets.	Item.
	\$160,354,362 81	Cost of Road, page 27.	
		Cost of equipment, page 29.	
	16,363,486 10	Stocks owned, page 37.	
	13,796,557 41	Bonds owned, page 39.	
		Other permanent invests.	
	3,367,297 53	Impvs. and betterments.	
	1,102,734 06	Lands owned.	
	12,236,123 22	Cash and current assets,	
		page 23.	
		Other Assets:	
		Equipment Trusts.	
	5,460,015 49	Materials and supplies.	
		Sinking Fund.	
		Sundries.	
	3,613,507 93	Advances to subsidiary	
		Companies.	
		Uninvested sinking funds	
		and deposits with	
\$98,068 49		Trustees.	\$35,882 96
28,369 66		Unadjusted claims.	37,510 45
	126,438 15		
	391,410 69	Accounts awaiting distbn.	
		Contingent Assets:	
		S. & N. A. Rd. 5% Consol.	
		Bonds outstanding, en	
3,247,000 00		dorsed by L. & N. Rd.Co.	3,247,000 00
7,000 00		Bills payable endorsed by	
		L. & N. Rd. Co.	7,000 00
	3,254,000.00		
		Profit and Loss, page 31.	
		Page 31 (or 33).	
<hr/>		<hr/>	
	\$220,065,933 39	Grand Total	\$

## COMPARATIVE GENERAL BALANCE SHEET—Cont'd.

June 30, 1907.		Year ended June 30, 1906.
Total.	Increase.	Decrease.
\$166,667,128 94	\$6,312,766 13	
15,976,994 57		\$386,491 53
13,752,057 41		44,500 00
3,469,784 05	102,486 52	
1,038,815 06		63,919 00
13,310,761 44	1,074,638 22	
6,471,926 68	1,011,911 19	
4,698,718 29	1,085,210 36	
		62,185 53
	9,140 79	
73,393 41		
683,286 79	291,876 10	
3,254,000 00		
<u>\$229,396,866 64</u>	<u>\$9,330,933 25</u>	

## COMPARATIVE GENERAL BALANCE SHEET—Cont'd.

June 30, 1906.

Item.	Total.	Liabilities.	Item.
\$59,917,120 00	\$60,000,000 00	Capital Stock, page 17,	\$59,917,220 00
82,880 00		and unissued liability.	82,780 00
	128,536,500 00	Funded Debt, page 23.	
	109,000 00	Funded Debt, Bonds matured.	
	7,549,433 30	Current liabilities, page 23.	
	617,000 00	Real Estate Mortgages,	
		accrued interest in funded	
	829,763 34	debt not yet payable.	
		Accrued interest on three	
		year gold notes not yet	
		payable.	
	581,650 41	Taxes accrued but not yet	
	458,540 52	paid reserve accounts.	
		Contingent Liabilities.	
		S. & N. A. Rd. 5% Consol.	
		Bonds outstanding en-	
3,247,000 00		dorsed by L. & N. Rd.Co.	3,247,000 00
		Bills payable endorsed by	
7,000 00		L. & N. Rd. Co.	7,000 00
	3,254,000 00		
	18,130,045 82	Profit and Loss, page 31	
		(or 33).	
	<u>\$220,065,933 39</u>	<u>Grand Total.</u>	

## COMPARATIVE GENERAL BALANCE SHEET—Cont'd.

June 30, 1907.		Year ended June 30, 1906.
Total.	Increase.	Decrease.
\$60,000,000 00	\$100 00	
		\$100 00
127,932,500 00		604,000 00
82,000 00		27,000 00
14,728,876 28	7,179,442 98	
617,000 00		
824,456 67		5,306 67
108,333 33	108,333 33	
632,384 46	50,734 05	
389,803 02		68,737 50
3,254,000 00		
20,827,512 88	2,697,467 06	
<hr/>	<hr/>	<hr/>
\$229,396,866 64	\$9,330,933 25	

"Polk 2."

Form A8. Miscellaneous Corporations and Railroads.

## ILLINOIS CENTRAL RAILROAD CO.

Chicago, Ill.

REPORT FOR  
JUNE 30, 1907.

Capital . . . . .	
Surplus . . . . .	
Undivided Profits . . . . .	
All other assets . . . . .	
Total Capital . . . . .	\$16,049,788.00
Less Tangible Property, etc. . . . .	11,612,348.00
Franchise . . . . .	
Tax . . . . .	22,187.20
When Corporation was first notified. . . . .	March 11, 1908

Report No. 37.

A copy attest.

POLK LAFFOON, JR.

Commonwealth of Kentucky vs. Southern Pacific Co.  
Filed April 7, 1908.

BEN MARSHALL, *Clerk.*

“Polk 2.”

REPORT

OF THE

ILLINOIS CENTRAL RAILROAD CO.

TO THE

AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY.

JUNE 30, 1907.

ARTICLE IV, SUBDIVISION 1.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every railway company or corporation, and guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace-car company, dining-car company, sleeping-car company, chair-car company, and every other like company, corporation or association, also every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annu-

ally pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town or taxing district, where its franchise may be exercised. The Auditor, Treasurer and Secretary of State are hereby constituted a Board of Valuation and Assessment for fixing the value of said franchise, except as to turnpike companies, which are provided for in section 1 of subdivision 4 of this article, the place or places where such local taxes are to be paid by other corporations on their franchise, and how apportioned, where more than one jurisdiction is entitled to a share of such tax, shall be determined by the Board of Valuation and Assessment, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time, as the business of the board may require. It shall be the duty of the Attorney-General, when requested by the Board of Valuation and Assessment, to attend said board at its meetings and advise with same in its proceedings.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, shall annually between the thirtieth day of June and the first day of October, make and deliver to the Auditor of Public Accounts of this State a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz.:

Name of corporation. Illinois Central Railroad Company.

Name the principal place of business of the corporation, company or association you represent, No. 1 Park Row, Chicago, Ill.

Give the name and official position of the officer making this report. Name, J. F. Titus, position, Assistant to President.

The kind of business in which the said corporation, company or association is engaged, Common Carrier.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date June 30, 1907. Preferred, none; Common, \$95,040,000.00.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or association, on June 30, 1907. Preferred, none; Common, \$950,400.

Amount of capital stock, as above, paid up; Par value of the preferred stock, as above; Par value of the common stock, as above; Real value of the stock, as above. Preferred, .....; Common, ....., as above stated.

Highest price at which the stock above mentioned was sold at a bona fide sale within twelve months next before June 30, 1907.

\$.....per share.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company or association, on June 30, 1907. Surplus fund, \$1,360,184.42; Undivided profits, \$.....; Value of all other assets, \$15,095,254.97.

State the total amount of indebtedness, as principal, of the said corporation, company or association, on June 30, 1907.

Bonded indebtedness, \$129,819,275.00; Rate of interest paid, 3 to 5 per cent; Other indebtedness, \$25,008,852.98; Amount of interest paid, \$.....; Total indebtedness, \$154,828,127.98.

State separately the total amount of gross and net receipts, or income of the said corporation, company or association, including interest on investments, and income from a other sources for twelve months next before June 30, 1907.

Gross earnings or income .....	\$60,500,428.74
Less expenses,	
Salaries .....	\$
Wages and operating expenses .....	\$38,538,639.51
Interest .....	\$ 7,676,592.39
Dividends .....	\$ 6,652,800.00
Enlargement of plant .....	\$ 3,794,986.97
Other expenses .....	\$ 2,791,052.37
Total, .....	\$59,454,071.24

Net income .....\$ 1,046,357.50

Amount and kind of tangible property in this State owned by the said corporation, company or association, on September 1, 1907. Amount of tangible property, see below. Kind of tangible property, operated under lease. All the tangible property owned by the C., St. L. & N. O. R. R. Co. and P. U. Depot Co. in Kentucky and it is operated under lease by the Illinois Central R. R. Co.

State where the tangible property aforesaid is situated, assessed or liable to assessment. County, see next sheet; City .....; Town .....; number or name of taxing district or precinct .....

#### ILLINOIS CENTRAL RAILROAD COMPANY.

Statement showing result of operation of the whole line and of the road located in Kentucky for the year ended June 30, 1907.

	I. C. System.	Kentucky.
Gross receipts .....	\$57,301,565 67	\$7,086,368 53
Operation expenses .....	38,538,639 51	5,441,237 56
Taxes .....	2,217,867 76	199,511 22
*Betterments .....	3,794,986 97	106,159 99
Net receipts .....	12,750,121 43	1,339,459 76
Other income .....	3,198,863 07	-----
Total .....	15,948,984 50	1,339,495 76
Interest on bonds .....	3,969,860 00	881,577 70
Rents .....	3,706,732 39	52,039 70
Total fixed charges .....	7,676,592 39	933,617 40
Other deductions .....	1,573,234 61	-----
Net applicable to dividends .....	6,699,157 50	405,842 36

\*Betterments for the whole line aggregate \$4,628,191.36, of which \$3,794,986.97 represents expenditures for improvements chargeable to income, as an offset against depreciation of the Company's property.

The foregoing is correct to the best of my knowledge, information and belief.

J. F. TITUS,

*Assistant to the President.*

STATE OF ILLINOIS }  
COUNTY OF COOK. } S.S.

Subscribed and sworn to before me this 30th day of September, 1907.

GLENN N. ANDREWS,

*Notary Public.*

My Commission expires Aug. 15, 1909.

C., St. L. & N. O. R. R., 552.93; P. U. D. Co., 0.70—  
Total, 553.63.

# MILES OF RAILROAD OPERATED IN KENTUCKY IN 1907 BY ILLINOIS CENTRAL R. R. CO.

Cairo to Fulton	S. D. 6	1.24	Louisville	1.14	
(inc. bridge) ---	2.27	" 13	Louisville short		
Ballard Co	9.77	" 15	route	1.52	
Wickliffe	.50	" 16	S. D. 15	1.00	
S. D. 37	3.16	" 17	" 19	1.95	
" 32	2.00	" 38	" 13	.12	
" 35	3.57	" 23	" 16	3.36	
" 22	1.04	" 22	" 61	1.57	
Carlisle Co	12.23	Fulton Co	7.48	" 22	5.05
Bardwell	.75	Fulton	.31	Hardin Co	36.16
Arlington	1.10	S. D. 22Pt	.32	West Point	.50
S. D. 23	2.24	" 38	1.94	Vine Grove	.55
" 22	3.14	" 20	2.38	S. D. 71	2.07
" 20	.62	" 1	2.82	" 72	.50
" 25	.93			" 69	1.87
" 35	1.08	Louisville to Ful-	" 64		1.92
" 29	.98	ton (inc. short	" 68		1.41
" 26	2.04	route)	273.15	" 108	1.88
" 24	1.20	Jefferson Co	19.03	" 66	2.44
Hickman Co	13.65	Jefferson short	" 63		2.89
Clinton	1.25	route	1.52	" 51	2.50

S. D. 55	2.21	S. D. 37	1.00	S. D. 1	3.05
" 84	1.96	" 63	4.72	" 90	.67
" 22	1.74	" 50	5.70	" 82	2.13
" 24	3.19	Union Co	34.77	" 25	3.62
" 33	1.84	Waverley	.38	" 24	2.58
" 37	3.13	Morganfield	.70	" 18	.27
" 38	2.02	Henshaw	.63	" 52	1.73
Graves Co	30.67	Sturgis	1.08	" 80	1.14
Hickory	.50	S. D. 54	2.32	" 38	3.68
Mayfield	.76	" 11	2.64	" 42	3.34
Pryorsburg	.50	" 3	1.80	Ohio Co	24.73
Wingo	.48	" 2	.19	Rosine	1.03
Water Valley	.80	" 1	3.91	Beaver Dam	.40
S. D. 41 pt	.44	" 64	1.80	Render	.75
" 73	2.21	" 43	3.60	McHenry	.51
" 67	2.61	" 53	3.73	Rockport	.49
" 66	1.63	" 55	.70	S. D. 108	2.04
" 107	2.94	" 33	3.90	" 32	.77
" 51	2.58	" 25	1.97	" 23	1.57
" 99	1.24	" 68	.94	" 31	1.46
" 94	.60	" 40	3.61	" 30	2.11
" 43	1.71	" 29	2.36	" 114	1.48
" 36	1.63	" 39	1.99	" 115	1.50
" 38	3.50			" 8	1.25
" 28	1.37	Uniontown Branch		" 36	1.49
" 25	2.21	Union Co	6.43	" 41	2.41
" 102	2.73	Morganfield	.41	" 10	1.21
" 10	1.09	Uniontown	.50	" 6	1.09
" 86	1.00	S. D. 1	1.92	" 106	.67
" 26 pt	1.76	" 3	1.54	" 65	1.00
Hickman Co	3.51	" 38	2.97	" 75	1.46
S. D. 26 pt	.82	Webster Co	2.30	" 19	1.15
" 33	2.36	Blackford	.50	" 81	1.19
" 34	.31	S. D. 58	2.50	" 82	.77
Fulton Co	3.18	Meade Co	2.69	Muhlenburg Co	26.05
Fulton	.44	S. D. 48	2.12	Central City	1.82
S. D. 1	3.18	" 49	.57	Greenville	.67
(Inc. Fulton		Grayson Co	33.80	S. D. 84	.26
Cut-off)	1.17	Big Clifty	.62	" 60	2.72
Henderson to		Leitchfield	.63	" 37	3.44
Hopkinsville,		Caneyville	.44	" 59	1.63
Main	119.57	Spring Lick	.67	" 86	1.40
Uniontown Br	6.43	S. D. 99	1.81	" 14	1.50
Henderson Co	14.00	" 58	2.93	" 65	1.73
Corydon	.92	" 59	.98	" 75	1.01
Henderson	1.35	" 67	.98	" 87	1.00
S. D. 68	1.60	" 35	2.32	" 7	.25
" 71	.36	" 50	1.95	" 33	2.26

S. D. 11	1.64	Owensboro	.54	S. D. 24	1.90
" 9	.78	Whitesville	.87	" 17	2.21
" 83	1.70	S. D. 3	.75	" 1	3.71
" 40	2.03	" 6	1.70	" 36	2.51
" 44	1.70	" 30	1.88	" 47	2.51
Crittenden Co	22.50	" 63	1.89	" 57	2.73
Marion	1.00	" 26	1.43	" 34	3.00
S. D. 36	3.69	" 25	.71	" 65	1.01
" 62	2.79	" 84	.71	Lyon Co	14.57
" 29	2.45	" 104	1.80	Kuttawa	1.19
" 60	1.36	" 32	2.20	S. D. 20	4.00
" 27	3.34	" 33	1.19	" 8	3.00
" 21	2.15	" 2	2.42	" 29	1.40
" 67	1.97	Ohio Co	24.22	" 7	2.50
" 4	3.11	Fordsville	.33	" 23	2.00
" 58	1.74	Deanfield	1.25	" 6	1.60
Marion Precinct.				Livingston Co	3.97
1x2	13.25	S. D. 44	.97	Grand Rivers	.25
Caldwell Co	26.40	" 33	1.69	S. D. 36	3.97
Fredonia (Kelsey)	.26	" 84	2.60	Marshall Co	12.20
Princeton	1.07	" 95	2.82	Gilbertsville	.11
S. D. 5	2.30	" 96	4.19	S. D. 20	1.44
" 55	2.86	" 77	1.50	" 61	1.17
" 3	1.00	" 80	1.43	" 55	.30
" 26	2.47	" 35	1.67	" 27	3.26
" 25	3.97	" 5	2.62	" 29	1.40
" 1	3.30	" 90	1.80	" 65	1.96
" 36	3.01	" 120	.65	" 32	2.12
" 48	3.17			" 64	.33
" 10	2.28	Hopkins Co	22.26	McCracken Co	18.90
" 19	1.84	White Plains	.50	Paducah	2.97
Trigg Co	8.67	Nortonville	.70	S. D. 40	2.01
Cerulean Springs	.91	St. Charles	.69	" 5	2.29
S. D. 4	.80	Dawson Springs	.86	" 4	2.82
" 7	2.00	S. D. 26	.38	" 12	1.39
" 44	3.22	" 6	.50	" 3	2.00
" 31	2.15	" 53	2.73	" 7	2.82
Christian Co	10.73	" 47	1.64	" 8	2.04
Gracey	.33	" 56	.60	" 41 pt.	.21
Hopkinsville	.69	" 96	2.00		
S. D. 54	3.03	" 22	2.44	P. U. Depot in	
" 74	1.48	" 88	2.89	Paducah, Mc-	
" 12	3.43	" 59	2.50	Cracken Co	.70
" 23	1.99	" 37	3.15	Blackford-Dixon	18.00
" 37	.80	" 38	2.43	Webster Co	18.00
Owensboro to		" 82	1.67	Clay	1.00
Horse Branch	42.16	Caldwell Co	19.91	Lisman	.50
Davies Co	17.94	Princeton	2.00	Dixon	.75

S. D. 58-----	.89	Larue Co -----	4.75	McCracken Co ..	14.66
" 18-----	2.74	Hodgenville -----	.25	Paducah -----	1.17
" 16-----	.58	S. D. 33-----	2.81	S. D. 126-----	.28
" 73-----	1.24	" 32-----	1.94	" 42-----	1.31
" 46-----	.95			" 22-----	1.52
" 17-----	4.10			" 39-----	2.14
" 20-----	3.19			" 18-----	2.51
" 19-----	3.31	Cairo to Paducah	31.93	" 15-----	3.18
" 6-----	1.00	Ballard Co -----	17.27	" 1-----	2.54
Cecelia to Hodg-		Barlow -----	.50	DeKoven Branch in	
enville -----	17.10	S. D. 37-----	5.66	Union Co. S. D. 33	
Hardin Co -----	12.35	" 27-----	1.33	is only 1.46 miles	
Elizabethtown ---	1.27	" 30-----	3.07	spur track.	
S. D. 23-----	1.02	" 26-----	1.38		
" 19-----	2.66	" 10-----	2.14		
" 18-----	.90	" 40-----	1.77		
" 1-----	2.32	" 6-----	.76		
" 2-----	2.92	" 16-----	.41		
" 3-----	2.50	" 41-----	.75		

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale. \$11,-681,293.00 assessment by Kentucky R. R. Commission for 1906.

Specify in detail the entire length of line or lines operated, owned, leased or controlled, in each county, city, town, and taxing district in this State. (Give the length of line in each county, town or taxing district separately.)

State the total mileage operated, owned, leased, or controlled in this State.....

Also the total length of the entire line or lines, as above, operated, owned, leased, or controlled, as above, elsewhere than in this State, 3,720.52, in Kentucky 553.63; total, 4,274.15.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in this State for twelve months next before June 30, 1907. Gross income, \$7,086,368.53; Net income or earnings, \$405,842.36.

State the entire gross and net income or earnings received by the said corporation, company or association, on business done in this State and elsewhere for the same length of time. Gross income, \$57,301,565.67; Net income or earnings, \$1,046,357.50.

ILLINOIS CENTRAL R. R. Co.,

J. F. TITUS,

*Ass't. to the President.*

STATE OF ILLINOIS }  
COUNTY OF COOK. } S.S.

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, J. F. Titus, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 30th day of September, 1907.

GLENN N. ANDREWS,  
*Notary Public.*

My Commission expires Aug. 15, 1909.

Filed April 7, 1908.

BEN MARSHALL, *Clerk.*

"Polk 3."

Form A8. Miscellaneous Corporations and Railroads.

NASHVILLE, CHATTANOOGA & ST. LOUIS RY. CO.

Nashville, Tenn.

REPORT FOR

JUNE 30, 1907.

Capital . . . . .	
Surplus . . . . .	
Undivided Profits . . . . .	
All other assets . . . . .	
Total Capital . . . . .	\$1,051,030.00
Less Tangible Property, etc. . . . .	705,250.00
Franchise . . . . .	345,780.00
Tax . . . . .	1,728.90

When Corporation was first notified March 11, 1908.

Final Notice, March 25, 1908.

Report No. 39.

A copy attest.

POLK LAFFOON, JR.

Commonwealth of Kentucky vs. Southern Pacific Co  
Filed April 7, 1908.

BEN MARSHALL, *Clerk.*

“Polk 3.”

REPORT  
OF THE  
NASHVILLE, CHATTANOOGA & ST. LOUIS R.Y.  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY  
JUNE 30, 1907.

ARTICLE IV, SUBDIVISION 1.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every railway company or corporation, and guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace-car company, dining-car company, sleeping-car company, chair-car company, and every other like company, corporation or association, also every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town or taxing district, where its franchise may be exercised. The Auditor, Treasurer and Secretary of State are hereby constituted a Board of Valuation and Assessment for fixing the value of said franchise, except as to turnpike companies, which are provided for in section 1 of sub-

division 4 of this article, the place or places where such local taxes are to be paid by other corporations on their franchise, and how apportioned, where more than one jurisdiction is entitled to a share of such tax, shall be determined by the Board of Valuation and Assessment, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time, as the business of the board may require. It shall be the duty of the Attorney-General, when requested by the Board of Valuation and Assessment, to attend said board at its meetings and advise with same in its proceedings.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, shall annually between the thirtieth day of June and the first day of October, make and deliver to the Auditor of Public Accounts of this State a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz.:

Name of corporation, Nashville, Chattanooga & St. Louis R'y.

Name the principal place of business of the corporation, company or association you represent, Nashville, Tenn.

Give the name and official position of the officer making this report. Name, J. H. Ambrose; Position, Treasurer.

The kind of business in which the said corporation, company or association is engaged, operating a railroad.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date June 30, 1907. Preferred, none; Common, \$10,000,000.00.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or

association, on June 30, 1907. Preferred, none; Common, 100,000.

Amount of capital stock, as above, paid up, none; Par value of the preferred stock, as above, none; Par value of the common stock, as above, \$10,000,000.00; Real value of the stock, as above. Preferred, none; Common, \$10,000,000.00.

Highest price at which the stock above mentioned was sold at a bona fide sale within twelve months next before June 30, 1907, \$147.00 per share.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company or association, on June 30, 1907. Surplus fund, none; Undivided profits, none; Value of all other assets, none.

State the total amount of indebtedness, as principal, of the said corporation, company or association, on June 30, 1907. Bonded indebtedness, \$16,005,000.00; Rate of interest paid, 5 91-100 per cent; Other indebtedness, \$2,559,925.13; Amount of interest paid,.....; Total indebtedness, \$18,564,925.13.

State separately the total amount of gross and net earnings, or income of the said corporation, company or association, including interest on investments, and income from all other sources for twelve months next before June 30, 1907.

Gross earnings or income.....	\$12,238,472.05
Less expenses,	
Salaries .....	99,650.00
Wages .....	5,092,416.53
Interest .....	947,640.00
Dividends .....	600,000.00
Enlargement of plant.....	
Other expenses .....	5,410,785.59
Total.....	\$12,150,492.12
Net income .....	\$ 87,979.93

Amount and kind of tangible property in this State owned by the said corporation, company or association, on September 1, 1907. Amount of tangible property, .....; Kind of tangible property,.....

State where the tangible property aforesaid is situated, assessed or liable to assessment.

County .....; City .....  
Town .....; number or name of taxing district or precinct.

### EXPLANATORY REPORT.

That portion of the Nashville, Chattanooga, & St. Louis Railway in the State of Kentucky is a part of the Nashville and Northwestern Railroad, now known as the Nashville Division, and a part of the Paducah, Tennessee & Alabama Railroad, now known as the Paducah & Memphis Division.

The total length of the Nashville Division is 168.50 miles; length in Kentucky, 8.4 miles.

The total amount of gross and net earnings and the income of the 8.4 miles in Kentucky for the 12 months next before June 30, 1907 was:

Gross earnings .... \$19,408.32

Expenses ..... 22,913.95

Loss..... \$ 3,505.63

The 8.4 miles lying in the State of Kentucky is situated in Fulton County, as follows:

Hickman Corporation.. 1.70

School District 11..... 1.86

“ “ 12..... .79

“ “ 13..... 1.86

“ “ 25..... .58

“ “ 16..... 3.31 8.40 owned.

### PADUCAH & MEMPHIS DIVISION.

The total length of the Paducah & Memphis Division is 254.20 miles; length in Kentucky, 4,923 miles.

The total amount of gross and net earnings and income of the 49.23 miles of said Paducah & Memphis Division in the State of Kentucky, for the 12 months of next before June 30, 1907, was:

Gross earnings ..	\$212,163.35
Expenses . . . . .	218,602.39
Loss . . . . .	\$ 6,439.04

The 49.23 miles lying in the State of Kentucky is situated as follows:

#### McCracken County:

Paducah Corporation and			
School District	.....	2.02	
"	"	12.....	.81
"	"	27.....	5.21
"	"	38.....	1.57
"	"	69.....	3.17
			12.78

Graves County..... .49

#### Marshall County:

School District	34.....	2.11	
"	"	35.....	1.24
"	"	36.....	2.09
"	"	37.....	2.64
"	"	38.....	2.42
"	"	1.....	3.04
"	"	46.....	2.18
"	"	47.....	2.27
			17.99

Benton Corporation .....	.81
Marshall County R. R. tax.....	8.02
Hardin Corporation .....	.42

## Calloway County:

School District 78.....	1.00	
“ “ 15.....	.50	
“ “ 12.....	.82	
“ “ 63.....	3.34	
“ “ 10.....	1.96	
“ “ 16.....	1.62	
“ “ 48.....	1.49	
“ “ 30.....	3.06	
“ “ 14.....	2.01	
“ “ 35.....	1.70	
“ “ 74.....	.47	17.97
		49.23 leased.

Dexter Corporation .....	.50
Murray Corporation .....	1.00
Hazel Corporation .....	.50

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale.

Specify in detail the entire length of line or lines operated, owned, leased or controlled, in each county, city, town, and taxing district in this State. (Give the length of line in each county, town or taxing district separately.)

## Fulton County:

Hickman Corporation..	1.70	
School District 11.....	1.86	
“ “ 12.....	.79	
“ “ 13.....	1.86	
“ “ 25.....	.58	
“ “ 16.....	3.31	8.40 owned.

## McCracken County:

Paducah Corporation and		
School District.....	2.02	
School District 12.....	.81	
" " 27.....	5.21	
" " 38.....	1.57	
" " 64.....	3.17	12.78

## Graves County:

School District 69.....	.49	.49
-------------------------	-----	-----

## Marshall County:

School District 34.....	2.11	
" " 35.....	1.24	
" " 36.....	2.09	
" " 37.....	2.64	
" " 38.....	2.42	
" " 1.....	3.04	
" " 46.....	2.18	
" " 47.....	2.27	17.99

Benton Corporation .....	.81
Hardin Corporation .....	.42
Marshall Co. R. R. Tax.....	8.02

## Calloway County:

School District 78.....	1.00	
" " 15.....	.50	
" " 63.....	3.34	
" " 16.....	1.62	
" " 30.....	3.06	
" " 35.....	1.70	
" " 12.....	.82	
" " 10.....	1.96	
" " 48.....	1.49	
" " 14.....	2.01	
" " 74.....	.47	17.97

---

49.23 leased.

Dexter Corporation .....	.50
Murray Corporation .....	1.00
Hazel Corporation .....	.50

State the total mileage operated, owned, leased or controlled in this State. Owned, 8.40 miles; Leased, 49.23 miles.

Also the total length of the entire line or lines, as above, operated, owned, leased or controlled, as above, elsewhere than in this State. Owned, 830.63 miles; Leased, 341.79 miles.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in this State for twelve months next before June 30, 1907.

Gross income, \$ . . . . .; Net income or earnings, \$ . . . . .

State the entire gross and net income or earnings received by the said corporation, company or association, on business done in this State and elsewhere for the same length of time.

Gross income, \$12,238,472.05; Net income or earnings, \$87,979.93.

J. H. AMBROSE,  
*Treasurer.*

Nashville, Chattanooga & St. Louis R'y

STATE OF TENNESSEE, }  
DAVIDSON COUNTY. } SS.:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, J. H. Ambrose, Treasurer of the N., C. & St. L. R'y, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand his 1st day of October, 1907.

R. T. SAUNDERS, N. P.

Filed April 7, 1908.

BEN MARSHALL, *Clerk.*

"Polk 4."

Form A8. Miscellaneous Corporations and Railroads.

LOUISVILLE & ATLANTIC RAILROAD CO.

Versailles, Ky.

REPORT FOR

JUNE 30, 1907.

Capital .....	
Surplus .....	
Undivided Profits .....	
All other assets .....	
Total Capital .....	\$521,428.00
Less Tangible Property, etc., .....	420,328.00
Franchise .....	101,100.00
Tax .....	505.50

When corporation was first notified . . . December 21, 1907  
 Tax Paid January 4, 1908.

Report No. 42.

A copy attest.

POLK LAFFOON, JR.

Commonwealth of Kentucky vs. Southern Pacific Co.  
 Filed April 7, 1908.

BEN MARSHALL, *Clerk.*

“Polk 4.”

REPORT  
OF THE  
LOUISVILLE & ATLANTIC RAILROAD COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY  
JUNE 30, 1907.

ARTICLE IV, SUBDIVISION 1.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every railway company or corporation, and guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace-car company, dining-car company, sleeping-car company, chair-car company, and every other like company, corporation or association, also every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town or taxing district, where its franchise may be exercised. The Auditor, Treasurer and Secretary of State are hereby constituted a Board of Valuation and Assessment for fixing the value of said franchise, except as to turnpike companies, which are provided for in section 1 of sub-

division 4 of this article, the place or places where such local taxes are to be paid by other corporations on their franchise, and how apportioned, where more than one jurisdiction is entitled to a share of such tax, shall be determined by the Board of Valuation and Assessment, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time, as the business of the board may require. It shall be the duty of the Attorney-General, when requested by the Board of Valuation and Assessment, to attend said board at its meetings and advise with same in its proceedings.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, shall annually between the thirtieth day of June and the first day of October, make and deliver to the Auditor of Public Accounts of this State a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz.:

Name of corporation, Louisville & Atlantic Railroad Company.

Name the principal place of business of the corporation, company or association you represent, Versailles, Ky.

Give the name and official position of the officer making this report. Name, R. N. Hudson; position, General Manager.

The kind of business in which the said corporation, company or association is engaged, Railroad.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date June 30, 1907. Preferred, none; Common, \$1,000,000.00.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or

association, on June 30, 1907. Preferred, none; Common, 10,000.

Amount of capital stock, as above, paid up, \$1,000,000.00; Par value of the preferred stock, as above, none; Par value of the common stock, as above, \$10,000; Real value of the stock, as above. Preferred, none; Common, nominal.

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before June 30, 1907. None sold.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company or association, on June 30, 1907, Surplus fund, none; Undivided profits, none; Value of all other assets, none.

State the total amount of indebtedness, as principal, of the said corporation, company or association, on June 30, 1907.

Bonded indebtedness, \$1,000,000.00; Other indebtedness, \$474,776.27; Total indebtedness, \$1,474,776.27.

Rate of interest paid, 5 per cent. Amount of interest paid, \$936.47 on floating debt and none on bonds.

State separately the total amount of gross and net earnings, or income of the said corporation, company or association, including interest on investments, and income from all other sources for twelve months next before June 30, 1907.

Gross earnings or income.....\$322,043.10

Less expenses, .

Salaries .....\$ 21,350.26

Wages .....\$139,122.47

Interest .....\$ 936.47

Dividends .....\$.....

Enlargement of plant.....\$.....

Other expenses .....\$191,191.36

Total.....\$352,600.56

Net deficit .....\$ 30,557.46

Amount and kind of tangible property in this State owned by the said corporation, company or association, on September 1, 1907.

Amount of tangible property, \$460,995.20.

Kind of tangible property, per list submitted as of July 1, 1907.

State where the tangible property aforesaid is situated, assessed or liable to assessment.

County .....; City .....  
Town .....; number or name of taxing district or precinct.

#### LOUISVILLE & ATLANTIC RAILROAD COMPANY.

Treasurer's Receipts and Disbursements from Sept. 1st, 1906, to Sept. 1st.

Balance on hand at close of August, 1906.....	\$11,617 79
Receipts During the Year Ending August 31, 1907.	
Received from agents.....	\$213,485 94
Received from conductors .....	14,017 20
Received from individuals and companies for repairs to cars and supplies furnished.....	11,791 63
Received from connecting lines for freight, mileage, and tickets .....	91,187 85
Received from connecting lines for overcharges and claims.....	1,798 21
Received from Adams Express Company for express facilities .....	2,137 24
Received from U. S. Post Office Department for mail facilities .....	4,779 86
Received from U. S. Government for transportation .....	262 53
Total receipts during the 12 months.....	\$339,460 46
Total.....	\$351,078 25

## Disbursements During the Year Ending August 31st, 1907.

Paid for labor.....		\$137,459 85
Paid for miscellaneous supplies.....	\$61,313 32	
Paid for fuel for locomotives.....	24,078 17	
Paid for equipment notes.....	22,069 96	
Paid for additions and betterments.....	11,705 25	
Paid for car repairs made by foreign roads....	3,524 08	
Paid for claims.....	3,414 09	
Paid for stock killed.....	1,774 80	
Paid for injured persons.....	5,025 69	
Paid for freight, mileage, and ticket balance to connecting lines .....	29,572 31	
Paid for rent of property and buildings.....	603 91	
Paid for miscellaneous court costs.....	1,391 29	
Paid for taxes .....	8,868 59	
Paid for interest .....	936 47	
Paid for ballast .....	5,728 23	
Paid for insurance .....	381 14	
Paid for commission .....	213 54	
Paid for expenditures for road (construction).....	48 10	
		<u>\$180,648 94</u>
		\$318,108 79
Balance in hands of Treasurer Sept. 1, 1907.....		\$32,969 46

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale. \$460,-995.20.

Specify in detail the entire length of line or lines operated, owned, leased or controlled, in each county, city, town and taxing district in this State. [Give the length of line in each county, town or taxing district separately.] Per schedule submitted as of July 1st, 1907.

State the total mileage operated, owned, leased or controlled in this State. 101.10.

Also the total length of the entire line or lines, as above, operated, owned, leased or controlled, as above, elsewhere than in this State.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in this State for twelve months next before June 30, 1907.

Gross income, \$322,043.10; Net deficit, \$30,557.46.

State the entire gross and net income or earnings received by the said corporation, company or association, on business done in this State and elsewhere for the same length of time all in Kentucky as above.

Gross income, \$ . . . . .; Net income or earnings, \$ . . . . .

R. N. HUDSON,  
*General Manager.*

COMMONWEALTH OF KENTUCKY }  
WOODFORD COUNTY } SS.:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, R. N. Hudson, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 28th day of September, 1907.

LAURA C. GRANDUCCI,  
*N. P. W. Co., Ky.*

My commission expires Jan. 26, 1908.

Filed April 10, 1908.

BEN MARSHALL, *Clerk.*

“Polk 5.”

Form A8.      Miscellaneous Corporations and Railroads.

CHESAPEAKE & OHIO RAILWAY CO.

Richmond, Va.

REPORT FOR

JUNE 30, 1907.

Capital . . . . .	
Surplus . . . . .	
Undivided Profits . . . . .	
All other assets . . . . .	
Total Capital . . . . .	\$9,086,460.00
Less Tangible Property, etc. . . . .	6,347,035.00
Franchise . . . . .	\$2,739,425.00
Tax . . . . .	\$13,697.13

When Corporation was first notified . . . . . March 11, 1908.

Report No. 43.

A copy attest.

POLK LAFFOON, JR.

Commonwealth of Kentucky vs. Southern Pacific Co.

Filed April 7, 1908.

BEN MARSHALL, *Clerk.*

“Polk 5.”  
REPORT  
OF THE  
THE CHESAPEAKE & OHIO RAILWAY COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY  
JUNE 30, 1907.

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ARTICLE IV, SUBDIVISION 1.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every railway company or corporation, and guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace-car company, dining-car company, sleeping-car company, chair-car company, and every other like company, corporation or association, also every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town or taxing district, where its franchise may be exercised. The Auditor, Treasurer and Secretary of State are hereby constituted a Board of Valuation and Assessment for

fixing the value of said franchise, except as to turnpike companies, which are provided for in section 1 of subdivision 4 of this article, the place or places where such local taxes are to be paid by other corporations on their franchise, and how apportioned, where more than one jurisdiction is entitled to a share of such tax, shall be determined by the Board of Valuation and Assessment, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time, as the business of the board may require. It shall be the duty of the Attorney-General, when requested by the Board of Valuation and Assessment, to attend said board at its meetings and advise with same in its proceedings.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, shall annually between the thirtieth day of June and the first day of October, make and deliver to the Auditor of Public Accounts of this State a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz.:

Name of corporation, The Chesapeake & Ohio Railway Co.

Name the principal place of business of the corporation, company or association you represent, Richmond, Va.

Give the name and official position of the officer making this report.

Name, L. F. Sullivan. Position, Comptroller.

The kind of business in which the said corporation, company or association is engaged, Common Carrier.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date June 30, 1907.

Preferred, \$8,400.00; Common, \$62,790,700.00.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or association, on June 30, 1907.

Preferred, 84; Common, 627,907.

Amount of capital stock, as above, paid up, \$62,799,100.

Par value of the preferred stock, as above, \$8,400.

Par value of the common stock, as above, \$62,790,700.

Real value of the stock, as above. Preferred, \$. . . . . ;

Common, \$. . . . .

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before June 30, 1907.

\$. . . . . per share.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company or association, on June 30, 1907.

Surplus fund, \$987,248.20; Undivided profits, \$. . . . . ;

Value of all other assets, \$181,890,856.10.

State the total amount of indebtedness, as principal, of the said corporation, company or association, on June 30, 1907.

Bonded indebtedness, \$106,481,354.17; Rate of interest paid, 4—4½—5—6 per cent.

Capital stock, \$62,799,100.40.

Other indebtedness, \$11,623,153.73; Amount in interest paid, \$4,664,879.61.

Total indebtedness, \$180,903,607.90.

State separately the total amount of gross and net earnings, or income of the said corporation, company or association, including interest on investments, and income from all other sources for twelve months next before June 30, 1907.

Gross earnings or income.....	\$26,148,495.60
Less expenses,	
Salaries, Wages, Opera-	
tion .....	\$17,183,042.50
Interest .....	\$ 4,664,879.61
Dividends .....	\$ 627,907.00
Enlargement of plant.....	\$ .....
Other expenses .....	\$ 3,611,595.58
Total.....	\$26,087,424.69

Net income .....\$ 61,070.91

Amount and kind of tangible property in this State owned by the said corporation, company or association, on September 1, 190—

Amount of tangible property, \$.....

Kind of tangible property, see next page.

State where the tangible property aforesaid is situated, assessed or liable to assessment.

County .....; City .....

Town .....; number or name of taxing district or precinct.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale.

See below.

Specify in detail the entire length of line or lines operated, owned, leased or controlled, in each county, city, town and taxing district in this State. (Give the length of line in each county, town or taxing district separately.)

Refer to reports returned by subsidiary companies, viz.: Covington & Cincinnati Elevated R. R. and Transfer & Bridge Co., the Chesapeake & Ohio R'y Co. of Kentucky.

The total income of the subsidiary companies were as shown by their reports filed with the Auditor of Public Accounts \$561,212.33. Their total valuation by the Railroad Commission of Kentucky and the Assessor of Kenton County was \$. All earnings and expenses

of the above subsidiary companies are included in the earnings and expenses of the C. & O. R'y Co. as shown on the opposite page. The gross and net earnings of these subsidiary companies are so stated in their reports as to show the total gross and net earnings derived from the operation of each, there being no other net earnings from the operation of said subsidiary companies except as shown in said reports. All tangible property of this company in Kentucky is included in said reports and this company has no tangible property in Kentucky.

This company's trains are run over the tracks of the Louisville & Nashville R. R. Co. from Lexington to Louisville, a distance of 84.40 miles and over the tracks of the Ashland Coal & Iron R'y Co. from Ashland to Denton, a distance of 21.30 miles, which mileage is not included in this report, but the earnings and expenses of those portions of the line are included in this report.

Mileage in Ky.:

C. & C. Bridge.....	1.0
Pass Belt R'y.....	4.2
C. & O. R'y of Ky.....	536.5
	<hr/>
	541.7
Less Trackage .....	105.7
	<hr/>
	536.0

State the total mileage operated, owned, leased or controlled in this State. As above.

Also the total length of the entire line or lines, as above, operated, owned, leased or controlled, as above, elsewhere than in this State. Other States 1290 miles.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in this State for twelve months next before June 30, 1907. Gross income, \$6,622,842.23; Net income or earnings, \$561,212.33.

State the entire gross and net income or earnings received by the said corporation, company or association, on business done in this State and elsewhere for the same length of time.

Gross income, \$26,148,495.60; Net income or earnings, \$61,070.91.

L. F. SULLIVAN,  
*Comptroller.*

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COMMONWEALTH OF VIRGINIA }  
CITY OF RICHMOND } SS.:

This day personally appeared before the undersigned, a Notary Public in and for the State and city aforesaid, L. F. Sullivan, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 26th day of September, 1907.

A. FERRETT, N. P.

My commission expires March 5, 1909.

Filed April 7, 1908.

“Polk 5.”

REPORT

OF THE

COVINGTON & CINCINNATI ELEVATED RAIL-  
ROAD & TRANSFER & BRIDGE COMPANY.

TO THE

AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY

JUNE 30, 1907.

ARTICLE IV, SUBDIVISION 1.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every railway company or corporation, and guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palae-car company, dining-car company, sleeping-car company, chair-car company, and every other like company, corporation or association, also every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town or taxing district, where its franchise may be exercised. The Auditor, Treasurer and Secretary of State are hereby constituted a Board of Valuation and Assessment for fixing the value of said franchise, except as to turnpike

companies, which are provided for in section 1 of subdivision 4 of this article, the place or places where such local taxes are to be paid by other corporations on their franchise, and how apportioned, where more than one jurisdiction is entitled to a share of such tax, shall be determined by the Board of Valuation and Assessment, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time, as the business of the board may require. It shall be the duty of the Attorney-General, when requested by the Board of Valuation and Assessment, to attend said board at its meetings and advise with same in its proceedings.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, shall annually between the thirtieth day of June and the first day of October, make and deliver to the Auditor of Public Accounts of this State a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz.:

Name of corporation, Covington & Cincinnati Elevated R. R. & Transfer & Bridge Co.

Name the principal place of business of the corporation, company or association you represent, Covington, Ky., and Richmond, Va.

Give the name and official position of the officer making this report.

Name, L. F. Sullivan. Position, Comptroller C. & O. R'y Co.

The kind of business in which the said corporation, company or association is engaged, Toll Bridge.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date June 30, 1907.

Preferred, none; Common, \$1,500,000.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or association, on June 30, 1907.

Preferred, none; Common, \$15,000.

Amount of capital stock, as above, paid up, \$1,500,000.

Par value of the preferred stock, as above, \$.....

Par value of the common stock, as above, \$1,500,000.

Real value of the stock, as above. Preferred, \$.....;  
Common, \$.....

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before June 30, 1907.

\$.....per share.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company or association, on June 30, 1907.

Deficit fund, \$906,066.34; Undivided profits, none;  
Value of all other assets, \$5,567,244.43.

State the total amount of indebtedness, as principal, of the said corporation, company or association, on June 30, 1907.

Bonded indebtedness, \$3,500,000.00; Rate of interest paid, 5 per cent.

Capital stock, \$1,500,000.00.

Other indebtedness, \$1,473,310.77; Amount of interest paid, \$.....

Total indebtedness, \$6,473,310.77.

State separately the total amount of gross and net earnings, or income of the said corporation, company or association, including interest on investments, and income from all other sources for twelve months next before June 30, 1907.

Gross income .....	\$264,785.45
Less expenses,	
Salaries .....	\$.....
Wages .....	\$.....
Interest .....	\$175,000.00
Dividends .....	\$.....
Enlargement of plant.....	\$.....
Other expenses .....	\$ 47,563.14
Total.....	<u>\$222,563.14</u>

Net income .....\$ 44,222.31

Amount and kind of tangible property in this State owned by the said corporation, company or association, on September 1, 1907.

Amount of tangible property, \$.....

Kind of tangible property, 4.25 miles of track and .34 miles of bridge approach and .19 miles of bridge from low water mark on Ky. side to low water mark on Ohio side, other property consisting of houses, lots, etc

State where the tangible property aforesaid is situated, assessed or liable to assessment.

County, Kenton; City, Covington.

Town.....; number or name of taxing district or precinct.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale.

Unknown.

Specify in detail the entire length of line or lines operated, owned, leased or controlled, in each county, city, town and taxing district in this State. (Give the length of line in each county, town or taxing district separately.)

Kenton County, Ky..... .19 Miles

City of Covington, Ky... .425 "

" " " " ... .34 Bridge Approach

State the total mileage operated, owned, leased or controlled in this State as above.

Also the total length of the entire line or lines, as above, operated, owned, leased or controlled, as above, elsewhere than in this State, .8 of a mile in Ohio.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in this State for twelve months next before June 30, 1907.

Gross income, \$264,785.45; Net income or earnings, \$42,222.31; No method for accurately dividing between Ky. and Ohio.

State the entire gross and net income or earnings received by the said corporation, company or association, on business done in this State and elsewhere for the same length of time.

Gross income, \$264,785.45; Net income or earnings, 42,222.31.

L. F. SULLIVAN,  
*Comptroller, C. & O. R'y Co.*

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COMMONWEALTH OF VIRGINIA }  
CITY OF RICHMOND } SS.:

This day personally appeared before the undersigned, a Notary Public in and for the State and city aforesaid, L. F. Sullivan, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 26th day of September, 1907.

A. FERRETT, N. P.

My commission expires March 5, 1909.

Filed April 7, 1908.

“Polk 5.”  
REPORT  
OF THE  
THE CHESAPEAKE & OHIO RAILWAY CO. OF  
KENTUCKY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY  
JUNE 30, 1907.

ARTICLE IV. SUBDIVISION 1.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every railway company or corporation, and guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace-car company, dining-car company, sleeping-car company, chair-car company, and every other like company, corporation or association, also every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town or taxing district, where its franchise may be exercised. The Auditor, Treasurer and Secretary of State are hereby constituted a Board of Valuation and Assessment for fixing the value of said franchise, except as to turnpike

companies, which are provided for in section 1 of subdivision 4 of this article, the place or places where such local taxes are to be paid by other corporations on their franchise, and how apportioned, where more than one jurisdiction is entitled to a share of such tax, shall be determined by the Board of Valuation and Assessment, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time, as the business of the board may require. It shall be the duty of the Attorney-General, when requested by the Board of Valuation and Assessment, to attend said board at its meetings and advise with same in its proceedings.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, shall annually between the thirtieth day of June and the first day of October, make and deliver to the Auditor of Public Accounts of this State a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz.:

Name of Corporation, The Chesapeake & Ohio R'y Co. of Kentucky.

Name the principal place of business of the corporation, company or association you represent. Ashland, Ky., Richmond, Va.

Give the name and official position of the officer making this report.

Name, L. F. Sullivan. Position, Comptroller.

The kind of business in which the said corporation, company or association is engaged. Common Carrier.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date June 30, 1907.

Preferred, none; Common, \$12,417,700.00.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or association, on June 30, 1907.

Preferred, none; Common, 124177.

Amount of capital stock, as above, paid up, \$12,417,700.

Par value of the preferred stock, as above, \$.....

Par value of the common stock, as above, \$12,417,700.

Real value of the stock, as above. Preferred, \$.....; Common, \$.....

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before June 30, 1907.

\$.....per share.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company or association, on June 30, 1907.

Surplus fund, \$529,009.78; Undivided profits, \$.....;

Value of all other assets, \$31,834,607.34.

State the total amount of indebtedness, as principal, of the said corporation, company or association, on June 30, 1907.

Bonded indebtedness, \$17,531,777.71; Rate of interest paid..... per cent.

Capital stock, \$12,417,700.00.

Other indebtedness, \$1,356,119.85; Amount of interest paid, \$.....

Total indebtedness, \$31,305,597.56.

State separately the total amount of gross and net earnings, or income of the said corporation, company or association, including interest on investments, and income from all other sources for twelve months next before June 30, 1907.

Gross earnings or income.....	\$6,358,056.70
Less expenses,	
Salaries, Wages, Operations.....	\$4,429,218.15
Interest.....	\$ 746,558.16
Dividends.....	\$ .....
Enlargement of plant.....	\$ .....
Other expenses.....	\$ 663,289.95
Total.....	\$5,839,066.76

Net income .....\$ 518,990.02

Amount and kind of tangible property in this State owned by the said corporation, company or association, on September 1, 1907.

Amount of tangible property, \$.....

Kind of tangible property, see report to Auditor of Public Accounts as of July 1, 1907.

State where the tangible property aforesaid is situated, assessed or liable to assessment.

County .....; City .....  
Town .....; number or name of taxing district or precinct.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale.

Unknown.

Specify in detail the entire length of line or lines, operated, owned, leased or controlled, in each county, city, town and taxing district in this State. (Give the length of line in each county, town or taxing district separately.)

See Report to Auditor of Public Accounts as of July 1, 1907.

The earnings and expenses of the following lines are included in this report:

Lexington, Ky., to Louisville, Ky.

Ashland, Ky., to Denton, Ky.

Pass & Belt R'y of Lexington, Ky.

Cov. & Cin'ti El. R. R. & T. & B. Co. for portion in Ky.

The earnings and expenses of the C. & O. R'y Co. of Ky. are included in the earnings and expenses of the C. & O. R'y Co.

Leased . . . . .	.52
Owned . . . . .	430.8
Trackage . . . . .	105.7

State the total mileage operated in this State, 541.7.

Also the total length of the entire line or lines, as above, operated, owned, leased or controlled, as above, elsewhere than in this State.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in this State for twelve months next before June 30, 1907.

Gross income, \$6,358,056.78; Net income or earnings, \$518,990.02.

State the entire gross and net income or earnings received by the said corporation, company or association, on business done in this State and elsewhere for the same length of time.

Gross income, \$6,358,056.78; Net income or earnings, \$518,990.02.

L. F. SULLIVAN,  
*Comptroller.*

COMMONWEALTH OF VIRGINIA }  
CITY OF RICHMOND } SS.:

This day personally appeared before the undersigned, a Notary Public in and for the State and city aforesaid, L. F. Sullivan, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 26th day of September, 1907.

A. FERRETT, N. P.

My commission expires March 5, 1909.

Filed April 7, 1908.

BEN MARSHALL, *Clerk.*

## JEFFERSON CIRCUIT COURT.

Filed Dec. 15, 1907.

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COMMONWEALTH OF KENTUCKY, - - - - Plaintiff,

vs.

AGREEMENT.

SOUTHERN PACIFIC COMPANY, S. W. HAGER,

ET AL., - - - - Defendants.

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It is hereby agreed, by and between the Commonwealth of Kentucky, N. B. Hays, Attorney-general; D. L. Hardesty, Revenue Agent for the State of Kentucky; Jas. H. Hazelrigg, J. Smith Hays, and John W. Ray, his attorneys of the one part, and the Southern Pacific Company, and Alex. P. Humphrey its attorney of the other part, that a true copy of the depositions taken or that may be taken in the above styled action, wherein the Commonwealth of Kentucky is plaintiff and the Southern Pacific Company, S. W. Hager, *et al.*, are defendant, now pending in the Franklin Circuit Court, Franklin County, Kentucky, may be filed in and read as the depositions of all persons so deposing in the following cases, to-wit: the case of the Commonwealth against the Southern Pacific Company, Harry J. Weaver, *et al.*, as the Board of Supervisors of Jefferson County for 1906, No. 45770 pending in the Jefferson Circuit Court of Jefferson County, Kentucky; the case of the Commonwealth of Kentucky against the Southern Pacific Company now pending in the Jefferson County Court for a new trial and the assessment of the omitted property of said company for the year 1906, No. 2607; and in the two cases of the Commonwealth of Kentucky against the Southern Pacific Company now pending in the Kentucky Court of

Appeals, Nos. 397 and 398, September Docket 1907, if they should be reversed and remanded for further proceedings in the Jefferson County and Circuit Courts; and that this agreement may be filed in the Franklin Circuit Court, and when such copy of said depositions with a copy of this agreement attached thereto shall be filed in all or any of said cases, they may be read as evidence on behalf of either party with the same effect as if taken in such case, and the parties hereto waive all objections to said depositions, except as to the competency of such evidence.

This November 16, 1907.

COMMONWEALTH OF KENTUCKY,

By N. B. HAYS,

N. B. HAYS,

*Attorney-general.*

JAMES H. HAZELRIGG,

J. SMITH HAYS,

JOHN W. RAY,

*Of the one part.*

SOUTHERN PACIFIC COMPANY,

Per ALEX. P. HUMPHREY,

*Of the other part.*

## FRANKLIN CIRCUIT COURT.

THE COMMONWEALTH OF KENTUCKY, BY ETC., - *Plaintiff,**vs.*

DEPOSITION.

S. W. HAGER, AUDITOR, ETC., - - - - *Defendants.*

The deposition of the defendant, S. W. Hager, Auditor, taken by the plaintiff for the purpose of cross-examination under the Code, at the office of N. B. Hays, Attorney-General, by consent the parties adjourned to the office of Auditor of Public Accounts, in the City of Frankfort, Ky., on July 6th, to be read as evidence in the above styled case.

Witness being duly sworn, deposes and says in answer to questions as follows:

By Mr. Ray for the plaintiff.

1. Q. State your name, residence, and occupation.

A. S. W. Hager, Frankfort, Kentucky, Auditor of Public Accounts.

2. Q. Prior to the time of your incumbency to office of Auditor, did you hold any other position or office and what was it?

A. Office of State Treasurer.

3. Q. When did you assume the duties of office of Treasurer above named?

A. On the 27th of February, 1900.

4. Q. Since the 27th of February, 1900, have you been continuously up until now, a member of the State Board of Valuation and Assessment?

A. I have.

5. Q. Have you in each and every year participated, personally in the action of the Board in making the assessment of the franchise valuation against the Southern Pacific Company?

A. I think I have. I may have been absent at some one of the meetings of the Board when the Company was assessed. I think the records will show whether or not I was present at all of the meetings.

6. Q. It is alleged in the petition and admitted in your answer that the valuation of the Southern Pacific Company for the purpose of franchise tax, has each year since 1902 been uniformly fixed at One Million Dollars. I will ask you to state upon what reports or other evidence you made such valuation.

A. Upon the reports filed by the Southern Pacific Company and statements made by representatives of the Company to the Board.

7. Q. Were those statements made by the representatives of the Company sworn to?

A. They were not.

8. Q. Does now and did the Board of Valuation and Assessment during the time you have been connected with it, keep minutes of its proceedings, or partial minutes of its proceedings?

A. Since I have been Auditor, the minutes of the proceedings have been rather fully kept. Prior to that time the records will show for themselves.

9. Q. I hand you a book purported to be minutes of the Board of Valuation and Assessment, and ask you to examine it and see if such is the record of that Board.

A. Yes, this is the record of the minutes kept by the Board.

10. Q. I call your attention to a minute appearing upon that book, dated January 17, 1901, relative to the assessment of the Southern Pacific Company, and ask you to read it to the stenographer. First say if there is such a minute, and read its contents.

A. I think this is a minute from the records kept by the Board of Valuation and Assessment. "On January 17, 1901, the Board met and it was agreed between Board and the Southern Pacific Company that the franchise of

said Company should be \$1,000,000 and should remain at the said amount so long as the business of the Company in Ky. did not increase. All members of Board present."

11. Q. I call your attention to a minute of January 6, 1906, relative to the assessment of the Southern Pacific Company, and will ask you to say whether or not it is a minute of that Board and read it to the stenographer.

A. The minute of the action of the Board on January 6, 1906, is as follows: "At a meeting of the Board held on this date with all members present, the net franchise of the Southern Pacific Company was fixed at \$1,000,000. This assessment is for the taxes of 1905. There being nothing further, the Board adjourned. (Signed) S. W. Hager, Auditor, Polk Lafoon, Secretary."

12. Q. Do you remember whether or not that on each year when the assessment was made—the franchise assessment of the Southern Pacific Company—there appeared before the Board, a representative of the Company in addition to the annual reports made for each year.

A. On each year you say?

13. Q. Yes.

A. I do not recall whether a representative appeared each year, some years they did.

14. Q. There has been filed with this case some attested copies of reports, marked Exhibits "A", "B", "C", "D", and "E." I will ask you to examine them, and see whether the original of those reports were made and filed with the State Board of Valuation and Assessment for the several years and there exist as record in your office.

A. Yes, sir.

15. Q. You say that as to each one of them separately?

A. Yes, I say it as to all of them.

16. Q. What is the custom of the Board, or of the Auditor's office—which ever it may be—as to the keeping of these reports and the records about franchise assessments, as to keeping the papers inside a heavy envelope or jacket with memorandums upon the backs? Is such a thing done?

A. That is the custom in this office.

17. Q. I will ask you to have made and filed with your deposition as a part thereof, copies of the envelopes or jackets in which the reports of the Southern Pacific Company are filed in your office for the several years from 1897 up to and including 1905 with all endorsements upon the jackets and memorandums as they appear in your office.

A. I will, and mark them Exhibits S. W. Hager, No. 1, 2, 3, and so on.

18. Q. I will ask you if the records of the State Board of Valuation and Assessment are kept in your office and under your supervision for all the years, even beyond this litigation, prior to these years?

A. All reports made to this office are kept as a part of the records of this office.

19. Q. I will ask you whether or not it is the custom and has been so far as you know, to keep all correspondence with reference to the assessment of franchise against any company with the reports in the jackets?

A. I do not know whether that has been the custom or not.

20. Q. I show you the envelope containing the reports of September 15, 1897, and ask you to examine its contents, and with special reference to a communication dated July 12, 1898, signed Southern Pacific Company, per Humphrey & Davie, and ask you to read that communication and read it as part of your deposition, if such is found in the records of the assessment of that year.

A. I find this copy with the records in my office, in a jacket in which the report of the Southern Pacific Company for the year 1897 has been kept. It reads as follows:

“LOUISVILLE, KY., July 12, 1898.

IN RE SOUTHERN PACIFIC ASSESSMENT.

*To the Honorable the Board of Valuation and Assessment, composed of Samuel H. Stone, Auditor, Geo. W. Long, Treasurer, and Charles Finley, Secretary of State, and to the Honorable Samuel H. Stone, Auditor.*

“GENTLEMEN: The Board of Valuation and Assessment has returned an assessment against the Southern Pacific Company of \$1,000,000 for the year 1898. With this we hand you check for \$5,250.00, in payment of the State taxes based upon this assessment, being at the rate of 52½ cents on the one hundred dollars.

“The Southern Pacific Company in making this payment does so without any intention on its part to reclaim this money from the State. It, however, desires to distinctly notify your Honorable Board and the Auditor that it does not recognize the validity of the assessment in any respect or the power of the Board to make it or any legal obligation upon the part of the company to respect the assessment or make payment under it. It reserves full right to resist any effort that may be made to certify such valuation to any county or other municipality for the purpose of local taxation, or the validity of any such certification if one should be made.

“It further desires to state distinctly that it will contend, in case any effort is made to recover against it in any manner or form, municipal or other local taxation based upon said assessment, that the said assessment is invalid, beyond the power of this Board and against the

rights of this company, both under the constitution and laws of this State and of the United States.

"It will insist upon all the defenses herein set out as well as all defenses based upon its protest and objections heretofore filed with you.

"Respectfully,

"SOUTHERN PACIFIC COMPANY,

"Per HUMPHREY & DAVIE,  
"Atty."

21. Q. I show you jacket and envelope containing the report of September, 1898, and ask you to examine same and with special reference to a letter from Humphrey & Davie to Samuel Stone, Auditor, dated October 1, 1898. See if such letter is a part of the contents of that jacket and a record in your office, and if so, read it to the stenographer.

A. I have examined contents of the jacket, containing the report of the Southern Pacific Company for September 15, 1898, and I find in that jacket with the report and other papers, the following letter, dated October 1, 1898. It reads as follows:

"LOUISVILLE, KY., October 1, 1898.

IN RE SOUTHERN PACIFIC COMPANY.

"Hon. Samuel H. Stone, Auditor, Frankfort, Ky.

"DEAR SIR: Enclosed please find report of Southern Pacific franchise tax. I have had it sworn to by Mr. J. B. Weaver, who is the agent appointed under the charter for Kentucky; and Davie and I, in talking over it, considered him to be the proper person. If you have any doubt about that and will return the report to me I will send it to New York and have it sworn to by Mr. Huntington, the president of the company.

"Of course you understand that this report is filed under the usual protest, but that we shall not forget the arrangement that has been made in reference to paying a franchise tax to the State under the usual valuation.

"Respectfully,

Enelo.

"HUMPHREY & DAVIE."

22. Q. I show you jacket containing the report of September 15, 1899, and ask you to examine its contents and say if you find any memorandum or calculations or other things, showing the action of the Board of which you was a member, as to assessment, and if so, what does that memorandum show?

A. I have examined the contents of the jacket containing the report of the Southern Pacific Company made on the 15th of September, 1899. Among other papers, I find a slip of paper on which is written the following: "Southern Pacific Company, capital in Kentucky \$6,000,000." I find the following calculation made on said slip: "Six million multiplied by  $47\frac{1}{2}$ , producing Twenty-eight Thousand, Five Hundred," which I presume is intended for dollars. I find on another slip, the following: "Southern Pacific Company willing to pay on assessment of \$1,000,000."

23. Q. I call your attention, Judge Hager, to the report of September 1, 1904, and the report of September 1, 1905, in which there is this distinction. In the report for 1904 there is no preferred stock, and the common stock is par value, \$197,849,250.64; in the report for September 1, 1905, the same amount of common stock is reported, and preferred stock to the amount of \$39,563,300.00; and upon the report of 1905, it is reported that a dividend of  $3\frac{1}{2}\%$  payable semi-annually, was declared upon the preferred stock, yet the assessed value of the franchise was \$1,000,000.00 for each year.

A. Yes, sir.

24. Q. You remember how that happened?

A. You are mistaken. We haven't made the assessment upon the report made in 1906. The assessment of \$1,000,000.00 was made upon the report filed as of the 1st of September, 1904, which report shows no preferred stock. No assessment has yet been made by this Board upon the report filed as of the first of September, 1905, showing preferred stock amounting to \$39,563,300.00.

25. Q. So that at the present time there has been no assessment made on the report as of September, 1905, or of September, 1906.

A. No assessment has been made by this Board upon either of these reports.

26. Q. Is it not true that so long as you have been a member of the Board of Valuation and Assessment that the Southern Pacific Company has continuously and repeatedly protested against their liability for assessment for a franchise tax.

A. I do not recall whether or not they contended that they were not liable for a franchise tax. Such contention may have been made, but I do not recall now that it has always been made or ever been made.

27. Q. Do you not remember it to be a fact, that the Southern Pacific Company, through its attorney, Judge Humphrey, filed these reports under protest from year to year, and so notified the Board.

A. Well, the record will show that.

28. Q. To refresh your recollection, Judge Hager, I show you a communication from the Southern Pacific Company by Alex. P. Humphrey, dated September 17, 1900, relative to the assessment made on the report of September 15, 1899, while you were a member of the Board, and also a communication from the same party, dated February 19, 1901, upon the report of September 15, 1900, in both of which communications he makes protest and denies the right of the Board to assess the Southern Pacific Company at all at any value for franchise tax.

I also show you a communication that is filed in the jacket of September, 1897, dated June 30, 1898, from Humphrey & Davie for the Southern Pacific Company, which is in effect the same character of protest and ask you if the same do not appear as records in your office?

A. I find the communication referred to, and in each communication I find the following: "It (referring to the Southern Pacific Company) protests against the said assessment as being unauthorized by law." These communications are on file in my office and are kept as a part of the records of this office and read as follows:

*"To the Honorable Board of Valuation and Assessment of the State of Kentucky.*

"GENTLEMEN: Referring to your communication dated August 24, 1900 addressed to this company, wherein you state that you have assessed the value of the franchise of this company at \$6,000,000 and that the same is subject to a tax for the year of 1900 at 47½ cents on the \$100, amounting to \$28,500, this company would respectfully state.

"It protests against the said assessment as being unauthorized by law, and, among other reasons, because:

"1. The returns made by this company to your Board show (and such is the fact) that during the period for which the said assessment was made, this company had no property in the State of Kentucky beyond \$100 in value, and during such period exercised no franchise in this State and conducted no business in this State.

"2. Under the law governing the assessment to be made by your Board it is required that you shall ascertain the gross earnings of the corporation derived from business done in this State and out of this State, and shall only assess against the corporation the value of its capital stock in the proportion borne by the gross earnings arising from business in this State to the total gross earnings arising from business transacted within and outside of this State.

"The returns show (and such is the fact) that there were no gross earnings in this State; hence there should have been no valuation at all fixed upon the capital stock of this company, and no valuation at all upon its franchise for taxation in this State.

"3. Under the law constituting this Board, it is required to ascertain the number of miles of railroad operated by a railroad company in this State and the number of miles operated outside of this State. The report of this company shows (and such is the fact) that it operated no railroad lines within this State during the period mentioned. The law required you to fix the proportion of value of the franchise and capital stock of this company according to the miles of line operated in this State compared to those operated out of this State.

"Under these circumstances your Board, under the law, should have fixed no value upon the capital stock or franchise of this corporation for taxation in this State.

"4. Under the charter of this company it was authorized to hold its meetings of directors and stockholders out of this State. During the period of this assessment it held its meetings of stockholders and directors in the city of San Francisco, State of California, and did not hold its meetings, either of directors or stockholders, in the State of Kentucky.

"Under these circumstances this Board had no right to consider that any of the property of the Southern Pacific Company was in this State except \$100, and should have made no further assessment against it.

"5. The assessment made by your Board was exorbitant, excessive, and entirely beyond the power of this Board. It was not made in accordance with the manner in which this Board assesses other similar corporations. Such manner is as set out in Clauses 2 and 3 hereof. It was made in direct contravention of the methods so applied by this board to other similar corporation, and is therefore oppressive, unjust, and unfair to this corporation.

"6. The assessment is violative of law and a denial to this company of the equal protection of the law; it does not regard the facts or law in the case and is void, and amounts to a taking of the company's property without compensation; and violates the Constitution of the State and of the United States.

"For these reasons this company respectfully protests against the said assessment and now prays that Your Honorable Board will vacate the same and hold it void and of no effect, or will reduce the same to \$100.

"Respectfully submitted,

"SOUTHERN PACIFIC CO.

"Per ALEX. HUMPHREY, *Atty.*"

September 17, 1900.

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*"To the Honorable Board of Valuation and Assessment of the State of Kentucky.*

"GENTLEMEN: Referring to your communication addressed to this company wherein you state that you have assessed the value of the franchise of this company at one million dollars, based upon its return as of September 15, 1900, and that the same is subject to a tax for the year 1900-1901 at 47½ cents on the \$100, amounting to \$4,750, this company would respectfully state:

"It protests against the said assessment as being unauthorized by law, and, among other reasons, because:

"1. The returns made by this company to your Board show (and such is the fact) that during the period for which the said assessment was made this company had no property in the State of Kentucky beyond \$100 in value, and during such period exercised no franchise in this State and conducted no business in this State.

"2. Under the law governing the assessment to be made by your Board, it is required that you shall ascertain the gross earnings of the corporation derived from

business done in this State and out of this State, and shall only assess against the corporation the value of its capital stock in the proportion borne by the gross earnings arising from business in this State to the total gross earnings arising from business transacted within and outside of this State.

“The returns show (and such is the fact) that there were no gross earnings in this State; hence there should have been no valuation at all fixed upon the capital stock of this company, and no valuation at all upon its franchise for taxation in this State.

“3. Under the law constituting this Board, it is required to ascertain the number of miles of railroad operated by a railroad company in this State and the number of miles operated outside of this State. The report of this company shows (and such is the fact) that it operated no railroad lines within this State during the period mentioned. The law required you to fix the proportion of value of the franchise and capital stock of this company according to the miles of line operated in this State compared to those operated out of this State.

“Under these circumstances your Board, under the law, should have fixed no value upon the capital stock or franchise of this corporation for taxation in this State.

“4. Under the charter of this company it was authorized to hold its meetings of directors and stockholders out of this State. During the period of this assessment it held its meeting of stockholders and directors in the city of San Francisco, State of California, and did not hold its meetings, either of directors or stockholders, in the State of Kentucky.

“Under these circumstances this Board had no right to consider that any of the property of the Southern Pacific Company was in this State, except \$100, and should have made no further assessment against it.

“5. The assessment made by your Board was exorbitant, excessive, and entirely beyond the power of this

Board. It was not made in accordance with the manner in which this Board assesses other similar corporations. Such manner is as set out in Clauses 2 and 3 thereof. It was made in direct contravention of the methods so applied by this Board to other similar corporations, and is therefore oppressive, unjust, and unfair to this corporation.

"6. The assessment is violative of law and a denial to this company of the equal protection of the law; it does not regard the facts or law in the case and is void, and amounts to a taking of the company's property without compensation; and violates the Constitution of the State and of the United States.

"For these reasons this company respectfully protests against the said assessment and now prays that Your Honorable Board will vacate the same and hold it void and of no effect, or will reduce the same to \$100.

"Respectfully submitted,

"SOUTHERN PACIFIC COMPANY,

"Per ALEX. HUMPHREY, *Atty.*"

February, 1901.

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*"To the Honorable Board of Valuation and Assessment of the State of Kentucky:*

"GENTLEMEN: Referring to your communication addressed to this company, wherein you state that you have assessed the value of its franchise at \$1,000,000, and that the same is subject to a tax for the year 1898 at 52½ cents on the \$100, amounting to \$5,250, this company would respectfully state:

"It protests against the said assessment as being unauthorized by law, and, among other reasons, because:

"1. The returns made by this company to your Board show (and such is the fact) that during the period for which the said assessment was made this company

had no property in the State of Kentucky beyond \$100 in value, and during such period exercised no franchise in this State, and conducted no business in this State.

"2. Under the law governing the assessment to be made by your Board it is required that you shall ascertain the gross earnings of the corporation derived from business done in this State and out of this State, and shall only assess against the corporation the value of its capital stock in the proportion borne by the gross earnings arising from business in this State to the total gross earnings arising from business transacted within and outside of this State.

"The returns show (and such is the fact) that there were no gross earnings in this State. Hence there should have been no valuation at all fixed upon the capital stock of this Company, and no valuation at all upon its franchise for taxation in this State.

"3. Under the law constituting this Board, it is required to ascertain the number of miles of railroad operated by a railroad company in this State and the number of miles operated outside of this State. The report of this company shows (and such is the fact) that it operated no railroad lines within this State during the period mentioned. The law required you to fix the proportion of value of the franchise and capital stock of this company according to the miles of line operated in this State compared to those operated out of this State.

"Under these circumstances your Board, under the law, should have fixed no value upon the capital stock or franchise of this corporation for taxation in this State.

"4. Under the charter of this company it was authorized to hold its meetings of directors and stockholders out of this State. During the period of this assessment it held its meetings of stockholders and directors in the city of San Francisco, State of California, and did not hold its meetings, either of directors or stockholders, in the State of Kentucky.

"Under these circumstances this Board had no right to consider that any of the property of the Southern Pacific Company was in this State, except \$100, and should have made no further assessment against it.

"5. The assessment made by your Board was exorbitant, excessive, and entirely beyond the power of this Board. It was not made in accordance with the manner in which this Board assesses other similar corporations. Such manner is as set out in Clauses 2 and 3 hereof. It was made in direct contravention of the methods so applied by this Board to other similar corporations, and is therefore oppressive, unjust, and unfair to this corporation.

"6. The assessment is violative of law; does not regard the facts or law in the case, and is void.

"For these reasons this company respectfully protests against the said assessment, and now prays that Your Honorable Board will vacate the same and hold it void and of no effect, or will reduce the same to \$100.

"This company, in order to assure your Honorable Board and itself that it has omitted no information as to its franchises and their operation, its property and its location, value and description, its business and its results, hereby begs to repeat what it has heretofore stated that it is willing and again offers to answer any questions, or submit to any examination on any and all of these subjects which the Board may indicate.

"Respectfully submitted,

"HUMPHREY & DAVIE,

*"For Southern Pacific Company."*

June 30, 1898.

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29. Q. Judge Hager, I will ask you as a matter of illustration to take the report as of September 1, 1904, and show by statement or calculation, in any way you

can, or any way you remember, as to how the Board arrived at the franchise value of \$1,000,000 in that report?

A. It was an absolutely arbitrary assessment. The Board took into consideration the fact that the company owned no tangible property of any consequence in the State, and that it owned or operated no railroad whatever in Kentucky, and that a valuation of a million dollars for the franchise that it exercised under the charter—under its Kentucky—charter—was a reasonable valuation.

30. Q. Now, will you state whether or not this same method of arbitrarily assessing the Southern Pacific Company at one million dollars for each year has not been followed by the Board of Valuation and Assessment so long as you have been a member of the Board, after this first year, when it was fixed at six million and reduced to one million dollars?

A. Yes; the method has been arbitrary.

31. Q. I will ask you whether or not you as the chairman of the Board, the Board of Valuation and Assessment, have been requested by the Attorney-general to re-assemble and re-assess this company for these several years upon some other basis than an arbitrary assessment; and that you for the Board, or the Board itself, declined to take further action upon the years that have been assessed?

A. I received the communication of the Attorney-general, requesting me to call a meeting of the Board for the purpose of re-assessing the Southern Pacific Company for the years for which it had been assessed. I declined to call the Board together for that purpose.

32. Q. Did you notify the other two members of the Board of such demand of the Attorney-general?

A. Yes; I showed them the communication.

33. Q. Did they or not acquiesce in your declining to re-assemble for that purpose?

A. Yes; they acquiesced.

Cross-examination by Alex. P. Humphrey,  
Attorney for the Southern Pacific Co.

1. Q. Judge Hager, I notice in a communication to the Board by Humphrey & Davie, for the Southern Pacific Company, dated June 30, 1898, the following language: "This company, in order to assure your Honorable Board and itself that it has omitted no information as to its franchises and their operation, its property and its location, value and description, its business and its results, hereby begs to repeat what it has heretofore stated—that it is willing and again offers to answer any questions, or submit to any examination on any and all of these subjects which the Board may indicate." Now, I would like to ask you whether this has not been the attitude of the Southern Pacific Company during the time that you were a member of this Board—that is, that it has been always willing and ready to give to the Board any information which the Board desires to have them?

A. That has been the attitude that it has assured toward the Board since I have been a member of the Board.

2. Q. Has there ever been, to your knowledge, any effort to conceal anything which the Board wanted to know, or had a right to know?

A. I think not.

3. Q. Judge Hager, taking the case of the Louisville & Nashville Railroad Company now, the tangible property of the Louisville & Nashville Railroad Company is assessed, I believe, by the Railroad Commission, that is a fact, is it not?

A. Yes.

4. Q. The Railroad Commission does not assume to assess any stocks, bonds, choses in action, belonging to the Louisville & Nashville Railroad Company, does it?

A. I think not.

5. Q. When the State Board of Valuation and Assessment goes to fix the valuation of the capital stock of the Louisville & Nashville Railroad Company and deduct from it its tangible property, so as to find out what is the value of its franchise, does not the State Board of Valuation and Assessment seek to include in that so-called franchise the value of the stocks, bonds, and choses in action of the Louisville & Nashville Railroad Company under the mileage proportion as fixed by the statute, and is not that the only way in which the stocks, bonds, and other choses in action of the Louisville & Nashville Railroad Company are assessed?

A. This Board in capitalizing said company includes in the capitalization the stocks, bonds, choses in action, tangible and all other property. After arriving at the correct capital, it deducts from that sum the tangible assessment made by the Railroad Commission, and the remainder is considered by this Board as the value of the franchise.

6. Q. I have taken the Louisville & Nashville as an example. A similar method is adopted, is it not, in the other railroads of the Commonwealth whose franchise is assessed by the State Board of Valuation and Assessment?

A. All other railroads that have tangible property in the State are treated in the same manner.

7. Q. Now, when this franchise is so found, then the proportion is taken of it according to mileage in and out of the State?

A. That is the method.

Q. 8. Judge Hager, the State Board of Valuation and Assessment has various methods, has it not, at arriving at this capitalization? Sometime it does it by finding out the net earnings and capitalizing them at 6 per cent. Sometime by considering the value of the capital stock and bonds of the corporation; at other times by employing both methods; and at other times by employing such a

method, which may be neither of the above, as seems to the Board just, is not that the fact?

A. Yes; that is the fact.

9. Q. Therefore, there are not a few cases, or what might be called arbitrary assessments by this Board—that is, assessments upon no regular rule, is not that the fact?

A. That is the fact almost in every instance. The Board, in order to be as nearly just as it can, is more or less arbitrary in its method.

10. Q. Now, as I understand you, the Board considering the fact that the Southern Pacific Company owned no property in Kentucky, and had no railroad in Kentucky and carried on no business in Kentucky, determined that under all the circumstances a million dollars was a fair assessment of its franchise, was not that the fact?

A. That is the fact. That was what the Board considered.

#### Re-examination by Mr. Ray.

1. Q. Were you informed that the Board, previous to the one of which you were a member, composed of Mr. Stone, Auditor, Mr. Long and Mr. Finley, had fixed the arbitrary assessment at one million dollars before you arrived at that sum?

A. The record here in this office shows that they had fixed it at a million dollars.

2. Q. Did you know at the time you fixed that arbitrary assessment at one million dollars that the former Board had fixed a like amount?

A. Yes; we had that information.

3. Q. Were you informed at the time you made the arbitrary assessment at one million dollars, either the first or any subsequent year that you participated in the assessment, that the amount of one million dollars had been agreed to between the former Board and the South-

ern Pacific Company, and that suits for several years taxes had been discontinued in the Franklin Circuit Court as the result of that agreement?

A. I do not remember that any such information as that was conveyed to the Board.

4. Q. Had you information that the Board, prior to your being a member thereof, had for the years 1893, 1894, 1895, 1896, and 1897 fixed the value of this property at \$24,000,000.00, and that that assessment had finally been reduced as the result of some sort of an agreement, and paid at one million?

A. All that I know about that is what the records in this office disclose.

5. Q. The question is, did you know what those records disclosed at the time you made this first assessment of that million dollars, or any subsequent assessment of one million dollars?

A. I have no recollection of ever having examined the reports made for those years.

S. W. HAGER.

Also the deposition of H. M. Bosworth, taken at the same time and place and for the same purpose mentioned in the caption. The witness being first duly sworn to, testified as follows:

By Mr. Ray.

1. Q. State your name, age, occupation.

A. H. M. Bosworth, treasurer.

2. Q. As a member of the State Board of Valuation and Assessment, did you participate in the action of assessing the Southern Pacific Company's franchise on the report of September, 1903, September, 1904, made respectively sometime in 1904 and 1906 as shown by the records?

A. Yes, sir.

3. Q. I will ask you to state upon what information the Board acted?

A. Upon the reports of the Auditor's office.

4. Q. Did the Board in making either of those two assessments in which you participated undertake to make any sort of calculation upon the reports as to the value of the Southern Pacific Company, or did you fix an arbitrary amount, regardless of what the figures of the report showed?

A. It was an arbitrary assessment.

Q. 5. Did you at that time, personally speaking for yourself, have information that the Board had prior to that date uniformly fixed the value of the franchise of the Southern Pacific Company at one million dollars, the sum that the defendant agreed to.

A. No.

6. Q. Do you remember, as to the assessment of the Southern Pacific Company, who suggested the one million dollar valuation, and how it happened to be fixed at that arbitrary amount?

A. I do not.

7. Q. Did you know at that time that you agreed to either of the assessments that this order had been entered by the former Board read by Judge Hager this morning, dated January 17, 1901, at which they fixed the value of one million dollars and agreed that it should remain at that figure so long as the business of the company did not increase?

A. No, sir; I did not.

8. Q. Mr. Bosworth, you were acquainted with the fact that Attorney-general Hays had requested the Board to re-assemble and re-assess the Southern Pacific Company?

A. Oh, yes; Judge Hager told me.

9. Q. And you declined to comply with that request after a conference with the other members?

A. Yes.

10. Q. And you acquiesced in his action in declining to re-assemble for that purpose?

A. Yes, sir.

H. M. BOSWORTH.

## Certificate.

State of Kentucky }  
 Franklin County }

I, Louise Sorg, notary public in and for the county and State aforesaid, do certify that the foregoing depositions of S. W. Hager, Auditor of Public Accounts of the Commonwealth of Kentucky, and H. W. Bosworth, treasurer of the Commonwealth of Kentucky, were taken before me at the time and place stated in the caption and for the purposes therein stated; that the witnesses were first duly sworn by me before giving said depositions; that said depositions were taken by me in shorthand and afterwards transcribed in typewriting, and that the foregoing 25 pages is a correct and true copy of the said depositions as given by the witnesses; and after said depositions were transcribed in typewriting, they were read by the said S. W. Hager and H. M. Bosworth respectively, and by them subscribed in my presence.

At the taking of said depositions, plaintiff, Commonwealth, was represented by Mr. Jno. W. Ray and Mr. J. Smith Hays for plaintiff, and the defendant, Southern Pacific Company was represented by Mr. A. P. Humphrey, attorney for Southern Pacific Company. No other interested party being present at the taking, except the two deponents, respectively S. W. Hager and H. M. Bosworth.

IN TESTIMONY WHEREOF, witness my hand as notary public aforesaid this 23d day of July, 1907.

LOUISE SORG,  
*Notary Public, Franklin County.*

My commission will expire at the termination of the next General Assembly.

## FRANKLIN CIRCUIT COURT.

COMMONWEALTH OF KENTUCKY, - - - - Plaintiff,

vs. NOTICE TO TAKE DEPOSITIONS.

S. W. HAGER, AUDITOR, H. M. BOSWORTH,  
TREASURER, H. V. MCCHESNEY, SECRETARY  
OF STATE, AS THE BOARD OF VALUATION AND  
ASSESSMENT IN AND FOR THE COMMON-  
WEALTH OF KENTUCKY, AND THE SOUTHERN  
PACIFIC COMPANY, - - - - Defendants.

The defendants, S. W. Hager, Auditor, H. V. McChesney, Secretary, and H. M. Bosworth, Treasurer, and the Southern Pacific Company, and each of them will please take notice that the Commonwealth of Kentucky, plaintiff herein, will on Saturday, July 6, 1907, between the hours of 9 a. m. and 6 p. m. at the office of the Attorney-general of the Commonwealth of Kentucky, on Capitol Square, in the city of Frankfort, county of Franklin, State of Kentucky, proceed to take the depositions of S. W. Hager, H. V. McChesney, and H. M. Bosworth, same when taken to be read as evidence in behalf of the plaintiff, Commonwealth of Kentucky, on the trial of the above-styled action pending in the said Franklin Circuit Court. Said taking to continue from day to day until same is completed.

N. B. HAYS,  
*Attorney-general.*

Notice of above taking of depositions is hereby accepted.

This 29th day of June, 1907.	S. W. HAGER.
This 29th day of June, 1907.	H. V. MCCHESNEY.
This 2nd day of July, 1907.	H. M. BOSWORTH.

## FRANKLIN CIRCUIT COURT.

COMMONWEALTH OF KENTUCKY, - - - - *Plaintiff,*

vs. NOTICE TO TAKE DEPOSITIONS.

S. W. HAGER, AUDITOR, H. M. BOSWORTH,  
 TREASURER, H. V. MCCHESENEY, SECRETARY  
 OF STATE, AS THE BOARD OF VALUATION AND  
 ASSESSMENT IN AND FOR THE COMMON-  
 WEALTH OF KENTUCKY AND THE SOUTHERN  
 PACIFIC COMPANY, - - - - - *Defendants.*

The defendants, S. W. Hager, Auditor, H. V. McChesney, Secretary, and H. M. Bosworth, Treasurer, and the Southern Pacific Company, and each of them will please take notice that the Commonwealth of Kentucky, plaintiff herein, will on Saturday, July 6, 1907, between the hours of 9 a. m. and 6 p. m. at the office of the Attorney-general of the Commonwealth of Kentucky, on Capitol Square, in the city of Frankfort, county of Franklin, State of Kentucky, proceed to take the depositions of S. W. Hager, H. V. McChesney, and H. M. Bosworth, same when taken to be read as evidence in behalf of the plaintiff, Commonwealth of Kentucky, on the trial of the above-styled action pending in the said Franklin Circuit Court. Said taking to continue from day to day until same is completed.

N. B. HAYS,  
*Attorney-general.*

Executed July 1, 1907, on Southern Pacific Company by delivering a copy of the within notice to J. B. Weaver, agent of said company, he being chief officer found in this county at this time.

H. A. BELL, S. J. C.  
 By H. WOODS, D. S.

## FRANKLIN CIRCUIT COURT.

COMMONWEALTH OF KENTUCKY, BY ETC., - - *Plaintiff,*  
*vs.*

S. W. HAGER, AUDITOR, - - - - - *Defendant.*

I, Ben Marshall, Clerk of the Franklin Circuit Court, do hereby certify that the foregoing 28 pages is a true and accurate copy of the deposition of S. W. Hager and H. M. Bosworth, taken in this cause, and filed in the Franklin Circuit Court September 27, 1907.

Witness my hand as Clerk of said court, this May 8, 1908.

BEN MARSHALL,  
*Clerk, Franklin Circuit Court.*

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Entered in the Jefferson County Court, October 27, 1908:

## JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, ETC., - - *Plaintiff,*  
*vs.* No. 2467.

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant.*

## ORDER.

COMMONWEALTH OF KENTUCKY, ETC., - - *Plaintiff,*  
*vs.* No. 3766.

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant.*

This day came the plaintiff and filed herein its answer to the statements and amended statements in the above causes, and also filed its rejoinder to the reply.

And then came the plaintiff and filed herein its reply to the answer of the defendant filed this day; and the affirmative allegations in said reply are now, by consent, controverted of record.

And thereupon came the parties and filed herein three stipulations; and also came the defendant and filed herein to be read on the hearing thereof, a copy its reports filed with the State Board of Valuation and Assessment from and including the years 1892 to 1907.

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Filed in Jefferson County Court, October 27, 1908:

JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, BY ETC., - - *Plaintiff,*

*vs.*

No. 2467.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

ANSWER.

COMMONWEALTH OF KENTUCKY, BY ETC., - - *Plaintiff,*

*vs.*

No. 3766.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

The defendant, Southern Pacific Company in answer to the statements and supplemental statements in the two causes above mentioned, says:

That while it is true that on July 1, 1906, September 1, 1906, July 1, 1907, and September 1, 1907, it was authorized to have \$100,000,000.00 of 7 per cent preferred stock, and \$200,000,000.00 of common stock yet in fact it did not have at each of said dates outstanding the full

amount so authorized. There was outstanding at each of these dates the amount set forth in its reports to the State Board of Valuation and Assessment as of June 30, 1906, and June 30, 1907, and no more.

Defendant denies that on said dates this company owned stocks of subsidiary companies of the par value of \$330,000,000.00 or of the fair cash value of \$280,000,000.00; or bonds of the face value of \$337,000,000.00, or the fair cash value of \$260,000,000.00, or of anything like that amount. It has set out in its said reports all of the stocks and bonds owned by it, and it refers to said report as stating what those stocks are and what is their par value. As to their cash value defendant is unable to state what is the fair cash value of each item of said stocks or bonds but will hereafter set out what is the total value.

Defendant denies that said property was subject to assessment for taxation, either ad valorem or franchise, for the years 1907 and 1908, except as hereinafter stated.

Defendant denies that said property or any of it had a taxable situs or was liable for State or County taxes for either of said years to the State of Kentucky and Jefferson County except as hereinafter stated. It denies that none of said property was assessed for the years 1907 or 1908, and states that it was assessed as hereinafter stated.

Defendant denies that any of its property was omitted from assessment for taxation for the year 1907 or 1908, or that any property which is set out in said statements or supplemental statements, either stock, bonds, securities, choses in action or cash, subject to assessment in Kentucky, was not assessed in Kentucky; and it makes such denial as the stocks and bonds set out in each of said statements and in each of said supplemental statements, including those set out in detail on pages 2 and 3 of the

supplemental statement filed February 8, 1908, and 3, 4 and 5 of supplemental statement filed February 8, 1908.

It denies that what the plaintiffs call surplus, or cash in the hands of agents or conductors, or bills receivable was assessable at any of said dates. It denies that it had any cash in the hands of agents or conductors or any bills receivable whatever in the year 1907 or 1908 at any of the dates above mentioned, except such sums as were currently in the hands of its agents and conductors who were conducting the transportation of its lines in the States and Territories west of El Paso. It denies that it had bills receivable in either of these years exceeding \$500,000.00, and this amount was simply that involved in the ordinary conduct of its business as a common carrier.

It denies that the value of said property amounted to anything like \$400,000,000.00. It denies that its report for the year 1907 or 1908 showed that the intangible property of this defendant was worth more than \$400,000,000.00, estimated at the price said property would bring at a fair voluntary sale or greater than the amount hereinafter set forth. It denies that the Board knew or that it was a fact the fair cash value of said intangible property was \$400,000,000.00 or anything like that sum. It denies that said Board fixed the value of its property for the year 1907 at \$2,374,000.00 or for the year 1908 at that sum. It denies that the assessment was not made in the manner required by law, that the assessment was not made in the time specified by law, or that the assessment was an undervaluation or was either fraudulent or void or was not uniform or was not binding or conclusive upon the Commonwealth.

Defendant denies that no assessment has been made of this defendant under the provisions of the Act of 1906,

for the years 1907 and 1908. It denies that this company has paid no tax of any class, character or form in the State of Kentucky for the years 1907 and 1908 or for either of them. It denies that the assessment that has been made was made on an undervaluation or that the fair cash value of defendant's property was known to the assessing officer or Board as a greater amount than they fixed it to be. It denies that the assessment was an undervaluation at all, or such an undervaluation as to constitute a fraud upon the State of Kentucky or Jefferson County or was wholly void or without force and effect, or was otherwise than valid. It denies that the section quoted from the Acts 1906 is a discrimination in favor of the defendant, or that thereby there is created an inequality of taxation in favor of the defendant; or that said act is in conflict with the Constitution of this State. It denies that the situs of the defendant's intangible property is in Jefferson County, Kentucky, or was on any of the dates set forth. It denies that defendant is a holding company. It denies that the property of other persons and corporations having a domicile in this State of a similar character is taxed in a different way from that in which the defendant's property has been taxed. It denies that the property of the defendant is subject to assessment for taxation otherwise than as it has been assessed.

2. Further answering this defendant says that at all the times mentioned in the State herein it has been and is a corporation created by the laws of the State of Kentucky conducting a line of steamships from New York to New Orleans and Galveston and a line of railroad from El Paso, Texas to San Francisco, California, Portland, Oregon, and Ogden, Utah, and various other branch lines, and the owner of stocks, bonds, and securi-

ties in various subsidiary corporations incident to its system of transportation; that all of its said stocks, bonds, securities, choses in action, and cash and all of its personal property have been at all times beyond the boundaries of the State of Kentucky and none of them have ever been kept therein, and none of them have ever been employed therein but all of them have had an actual situs beyond the boundary of the State of Kentucky and all of them have been employed in the business of this defendant as a common carrier and in the organization, operation, and conduct of its transportation lines and not otherwise, and none of them are taxable in the State of Kentucky and to tax them would be in violation of the Fourteenth Amendment of the Constitution of the United States and a regulation of Interstate Commerce.

3. Further answering, this defendant says that it files the reports, copies of which are filed with the statements herein with the Auditor of Public Accounts for the State of Kentucky as of June 30, 1906, and June 30, 1907; that these reports contained all the stocks, bonds, securities, and choses in action belonging to this defendant upon the dates named, and that it owned no others; that the same are set out in said report in great detail; that the State Board of Valuation and Assessment for each of said years, assessed the value of the same at \$237,400,000.00, and took one per cent thereof as the proper amount apportionable to the State of Kentucky; that in fact they should have been valued as of June 30, 1906, at no more than \$145,000,000.00, and as of June 30, 1907, at no more than \$158,000,000.00; that is to say, the defendant says that taking the average market value of its capital stock for the year ending June 30, 1906, would produce the sum of \$179,753,783.85; that the defendant had tangible property all of which had its situs beyond the boundary of the

State of Kentucky and none of which had ever had any situs in the State of Kentucky amounting to \$35,194,524.08 which was the part of the value of its capital stock and entered into it and should be deducted from the total value as above given; that in like manner the average value of its capital stock for the year ending June 30, 1907, was \$205,041,421.75; its tangible property at the same time of the same character as that above mentioned amounting to \$47,283,002.62, which should be deducted giving the results as stated above, and defendant says that this is assuming—what is not true—that all of its stock could have been sold at such average value.

Defendant says that all of its tangible property, real estate, materials, supplies, equipments, ships, had an actual situs outside the boundaries of the State of Kentucky during all these periods and that to include their value in any taxation in the State of Kentucky would be violative of the 14th Amendment of the Constitution of the United States and to determine the amount of defendant's franchise taxable in Kentucky in a method other than taking a proper proportion would be to adopt a method as applied to the Southern Pacific Company different from that applied to other corporations of like character, by the law and by the practice of the State Board of Valuation and Assessment, and would be violative of the 14th Amendment to the Constitution of the United States and also violative of the Constitution of the State of Kentucky, and a regulation of Interstate Commerce.

Defendant makes the answers it has filed to the separate statements herein applicable to the supplemental statements. It says that it has paid the State and County taxes based upon the assessment made by the State Board of Valuation and Assessment for each of these years, and it prays to be hence dismissed.

HUMPHREY, DAVIE & HUMPHREY,  
*Attorneys for defendant.*

Filed in Jefferson County Court, October 27, 1908:

JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, ETC., - - - *Plaintiff,*

*vs.*

REPLY.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

The plaintiff for reply to the answer of defendant, Southern Pacific Company, this day filed and particularly to the second and third paragraphs, denies that at all the times mentioned in the statement herein the defendant has been and is a corporation created by the laws of the State of Kentucky operating a line of railroad from El Paso, Texas, to San Francisco, California, Portland, Oregon, and Ogden, Utah, and various other branch lines, admits that it is the owner of stocks, bonds, and securities in various companies. Denies that same are necessary and incident to its system of transportation. Denies that said intangible property and certain of its tangible personalty, to wit, its steamships and water craft, have been at all times or any time so far as a taxable situs is concerned beyond the boundaries of the State of Kentucky, denies that none of them had ever been employed therein. Denies that all of them or any of them have been an actual situs beyond the boundaries of Kentucky. Denies that said intangible property has been employed by the defendant in its business as a common carrier and in the organization, operation, and conduct of its transportation lines. States that said defendant has owned and held said property as a holding company to control the policies of certain companies, to collect the dividends thereon and to speculate in said property. Denies that

they are not taxable by the State of Kentucky. Denies that to tax same for ad valorem tax as a citizen of Kentucky would be in violation of the 14th Amendment of the Constitution of the United States. States that to tax them under Section 5 of Art. 4, Chapter 22, of the Acts of 1906, page 130, may or may not be unconstitutional but to tax them under the general tax law of this State is not because said intangible property belongs to and is the property of a citizen of this State.

For reply to the third paragraph of defendant's answer, plaintiff admits that all of its tangible property except its ships and water craft had an actual situs outside the boundaries of Kentucky during all of these periods. It admits that to include said tangible property permanently located in and in use in another State in an assessment for taxation by this State or to tax the same or the gross receipts from such property would be violative of certain constitutional provisions as to commerce and contrary to the 14th Amendment of the Constitution of the United States.

Plaintiff denies that this State has jurisdiction to tax this defendant under Section 4077 of the Kentucky Statutes or Section 5 of Art. 4, Chapter 22, Acts of 1906, denies that it has any right to tax or assess defendant's property under said article. States that defendant's property is assessable and should have been assessed under the General Taxing Laws of this State. States that if assessable and taxable under said Section 5 all its intangible property must and should have been assessed whereas the said Board assessed the defendant on one per cent of its intangible property, that said assessment should have included an assessment of all defendant's intangible property, that said assessment for said reason is fraudulent and void.

Plaintiff makes the second and third paragraphs of its former reply a part of this reply as though set out in full herein.

COMMONWEALTH OF KENTUCKY,

By M. J. Holt,

*Attorney for Plaintiff.*

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Filed in Jefferson County Court, October 27th, 1908:

JEFFERSON COUNTY COURT.

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COMMONWEALTH OF KENTUCKY, BY ETC., - - Plaintiff,

*vs.*

No. 2467.

SOUTHERN PACIFIC COMPANY, - - - Defendant.

REJOINDER.

COMMONWEALTH OF KENTUCKY, BY ETC., - - Plaintiff,

*vs.*

No. 3766.

SOUTHERN PACIFIC COMPANY, - - - Defendant.

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The defendant by way of rejoinder to the plaintiff's reply filed herein denies that the method pursued by the State Board of Valuation and Assessment was *ultra vires* or void or that the assessments made by it were not made in the time and manner required by statute, or were a discrimination in favor of the defendant, or is contra-vention of the Constitution of the State of Kentucky in any respect, or an undervaluation by that Board of de-

defendant's property assessable in Kentucky or that said assessments were nominal or were a fraud upon the plaintiff; or that the State Board of Valuation and Assessment disregarded the law or made the assessment as a matter of policy or because they were made to believe that the defendant would dissolve the Kentucky corporation and take out a Charter in another State. Defendant denies that for the tax years 1906, 1907, and 1908 it was insisted by the Assessor of Jefferson County or the Board of Supervisors or the County Attorney of Jefferson or the Revenue Agents for the State at large or by their counsel, or by the said Hays, or by the present Attorney General, or his Assistants, or general counsel, that the State Board of Valuation and Assessment had no right or authority to list or assess a franchise tax against it, or that the only assessment which could be made against it or upon its property was its intangible property having a taxable situs in this Commonwealth because the domicile of the Company was at Beechmont or that the defendant was not liable to a franchise tax in the State of Kentucky. To the contrary, the defendant says that each of those officers has insisted from time to time and is now insisting that this defendant is a corporation required to report and to be assessed under Section 4077.

Defendant denies that this defendant persuades the State Board of Valuation and Assessment to assess a franchise tax against it or that it does so for the purpose of pleading such assessment in bar of a real assessment of its intangible property. The defendant denies that such intangible property has been worth any such sum as that stated by the plaintiff. It denies that all the suits which have been commenced in the Franklin Circuit Court or the Jefferson Circuit Court or the Jefferson County Court have been compromised, but to the contrary states

that some of these suits are still pending and others have been dismissed by the Commonwealth and in others judgments have been entered by the court.

The defendant makes a part of its rejoinder its answers filed herein and especially to that part of plaintiff's reply which is a repetition of the plaintiff's supplemental statement.

Defendant prays to be hence dismissed.

HUMPHREY, DAVIE & HUMPHREY,

*Attorneys for Defendant.*

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Filed in Jefferson County Court, October 27, 1908:

JEFFERSON COUNTY COURT.

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COMMONWEALTH OF KENTUCKY, BY HOLLAND L.

ANDERSON, ETC., - - - - - *Plaintiff,*

*vs.* No. 2467.

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant.*

STIPULATION.

COMMONWEALTH OF KENTUCKY, BY JOHN A.

CASSADAY, REVENUE AGENT, - - - - - *Plaintiff,*

*vs.* No. 3766.

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant.*

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It is stipulated between the plaintiff and the defendant, The Southern Pacific Company, in each of the above

cases that the following steamers, tugs, and barges owned by the Southern Pacific Company, were enrolled or licensed during the periods mentioned in these proceedings, at the following ports:

S. S. Chalmette	-----	New York.
S. S. Excelsior	-----	New York.
S. S. El Dorado	-----	New York.
S. S. El Paso	-----	New York.
S. S. El Monte	-----	New York.
S. S. El Mar	-----	New York.
S. S. El Norte	-----	New York.
S. S. El Rio	-----	New York.
S. S. El Cid	-----	New York.
S. S. El Sud	-----	New York.
S. S. Comus	-----	New York.
S. S. Proteus	-----	New York.
S. S. El Valle	-----	New York.
S. S. El Dia	-----	New York.
S. S. El Siglo	-----	New York.
S. S. El Alba	-----	New York.
S. S. El Amigo	-----	New York.
S. S. Momus	-----	New York.
S. S. Antilles	-----	New York.
S. S. Creole	-----	New York.
Tug Confidence and 28 barges,		New York.
Tug El Chico	-----	New York.
Tug El Toro	-----	New York.
Barge El Toro	-----	Galveston.
Barge Cyclops	-----	New York.
Barge Penates	-----	New York.
Barge Minerva	-----	New York.

M. J. HOLT,

*For Plaintiff.*

HUMPHREY, DAVIE & HUMPHREY, /

*For Defendant.*

## JEFFERSON COUNTY COURT.

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COMMONWEALTH OF KENTUCKY, BY ETC., - - *Plaintiff,*

*vs.* No. 2467.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

## STIPULATION.

COMMONWEALTH OF KENTUCKY, BY ETC., - - *Plaintiff,*

*vs.* No. 3766.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

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It is agreed between the plaintiff and defendant herein as follows:

1. The plaintiff may read on the hearing herein the evidence of S. W. Hager and H. M. Bosworth taken in the case of Commonwealth of Kentucky vs. Southern Pacific Company, No. 2607, in this court.

2. That for the year 1907 the property of the Southern Pacific Company was not assessed in Kentucky otherwise than by the State Board of Valuation and Assessment.

That for the year 1908 the property of the Southern Pacific Company was not assessed in Kentucky other than by the State Board of Valuation and Assessment and by the Board of Supervisors of Jefferson County, Kentucky. The latter Board assessed \$10,000,000.00 of bonds against the Southern Pacific Company. From this

assessment the Southern Pacific Company prosecuted and there is now pending an appeal in the Jefferson Quarterly Court, the Southern Pacific Company insisting that such assessment is void.

M. J. HOLT,  
*For Plaintiff.*

HUMPHREY, DAVIE & HUMPHREY,  
*Attorneys for Defendant.*

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JEFFERSON COUNTY COURT.

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COMMONWEALTH OF KENTUCKY, BY ETC., - - *Plaintiff,*

*vs.* No. 2467.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

STIPULATION.

COMMONWEALTH OF KENTUCKY, BY ETC., - - *Plaintiff,*

*vs.* No. 3766.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

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It is agreed between counsel for plaintiff and defendant that the fair cash value of the intangible property of the defendant, the Southern Pacific Company,

consisting of stocks, bonds, choses in action, and cash, as of June 30, 1906, and September 1, 1906, and June 30, 1907, and September 1, 1907, whether said assessment should have been made by the County Assessing officers of Jefferson County as of September 1st, of each of these years or by the State Board of Valuation and Assessment as of June 30th of each of these years, was the difference between the tangible property of the defendant company and the average market value of its total capital stock, preferred and common; that the total capital stock of said company as of June 30, 1906, and September 1, 1906, was \$39,569,700.00 of preferred and \$197,849,258.00 of common; that the average market value for the year ending on each of these dates was \$119.62 per share of preferred, and \$66.93 per share of common; that the total capital stock as of June 30, 1907, and September 1, 1907, was \$39,569,700.00 of preferred and \$197,849,258.64 of common; that the average market value of preferred was \$114.81 per share, and of the common \$80.37 per share, for the year ending on each of these dates, that the total tangible property to be deducted from \$179,753,783.85, the average market value of the capital stock as of June 31, 1906, and September 1, 1906, amounts to \$35,194,524.08, and leaves the fair cash value of the intangible property for the year ending June 30, 1906, and September 1, 1906, \$144,559,259.77; that the total tangible property to be deducted from \$205,041,421.75 as of June 30, 1907, and September 1, 1907, amounts to \$47,283,002.62, and leaves the fair cash value of the intangible property for the year ending June 30, 1907, and September 1, 1907, \$157,758,419.13.

In the amount of tangible property deducted in each instance is the value of the vessels belonging to the Southern Pacific Company, and the names of each and their value are set forth in the deposition of William Mahl filed herein. This deposition shows such values as of June 30, 1906, and June 30, 1907, but it is stipulated that the value was substantially the same as of September 1, 1906, and September 1, 1907.

HUMPHREY, DAVIE & HUMPHREY,  
*For Southern Pacific Company.*

M. J. HOLT,  
*For Commonwealth, Etc.*

JOSEPH SELLIGMAN,  
*County Attorney for Jefferson County.*

Filed in County Court October 27, 1908.

REPORT  
OF THE  
SOUTHERN PACIFIC COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY.  
NOVEMBER 15, 1892.

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ARTICLE III.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every Railway Company or Corporation, and every incorporated bank, trust company, guarantee or security company, gas company, water company, bridge company, ferry company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace car company, dining car company, sleeping car company, chair car company, and every other like company, corporation or association, and also every other corporation, company or association having or exercising any special or exclusive privilege or franchise, not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The place

or places where such local taxes are to be paid, and how apportioned, where more than one jurisdiction is entitled to share of such tax, shall be determined by the Auditor, Treasurer and Secretary of State, who are hereby constituted a Board of Valuation and Assessment for said purpose, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time as the business of the board may require.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, the corporations, companies and associations mentioned in the next preceding section, except banks and trust companies, whose statements shall be filed as hereinafter required by Section 16 of this article, shall annually, *between the fifteenth day of September and first day of October*, make and deliver to the Auditor of Public Accounts of this State, a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz:

Name of corporation: Southern Pacific Company.

Name the principal place of business of the corporation, company or association you represent: San Francisco, California.

Give the name and official position of the officer making this report: Name, Collis P. Huntington; Position, President.

The kind of business in which the said corporation, company or association is engaged: The operating of associated lines.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date November 15, 1892: Preferred, none; Common, \$119,073,170.00.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or association, on November 15, 1892: Preferred, none; common, 1,190,431.

Amount of capital stock, as above, paid up, \$119,073,-170.00.

Par value of the preferred stock; as above, none.

Par value of the common stock, as above, \$100.00 per share.

Real value of the stock, as above. Preferred, none; common, impossible to say.

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before November 15, 1892. \$44.00 per share is highest of which I have any knowledge.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company or association, on November 15, 1892: Surplus fund, none on hand; undivided profits, none on hand; value of all other assets, impossible to state. See Exhibit "A" in respect to assets, and Exhibit "B" in respect to profits.

State the total amount of indebtedness, as principal, of the said corporation, company or association, on November 15, 1892: \$25,007,526.93 excluding capital stock.

Bonded indebtedness . . . . .	\$2,929,000 00
Other indebtedness . . . . .	22,078,526 93
Total indebtedness . . . . .	25,007,526 93

Rate of interest paid 6 per cent.

Amount of interest paid, \$114,000.00.

State separately the total amount of gross and net earnings, or income of the said corporation, company, or association, including interest on investments, and income from all other sources for twelve months next before November 15, 1892.

Gross earnings or income .....	\$44,867,399	13
Less expenses,		
Salaries .....	\$	
Wages .....	\$	
Interest .....	\$	
Dividends .....	\$	
Enlargement of plant .....	\$	
Other expenses .....	\$	
Total .....	\$44,789,639	43
†Net income .....	\$77,759	70

Amount and kind of tangible property in this State owned by the said corporation, company or association, on November 15, 1892.

Amount of tangible property: Less than \$100.00.

Kind of tangible property: Office furniture.

State where the tangible property aforesaid is situated, assessed or liable to assessment: County, Jefferson.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale. Less than \$100.00.

State the total length of the entire line or lines operated, owned, leased, or controlled in this State by the said corporation, company or association.

Specify in detail the entire length of the line or lines operated, owned, leased or controlled as above, in each county, city, town and taxing district in this State. (Give the length of line in each county, town or taxing district separately.) None.

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 †Provided the amounts advanced to some of the companies is repaid; if not, this net will be entirely effaced.

## REMARKS:

All meetings of stockholders and directors are held in San Francisco, Cal.; all stocks, bonds, and other securities of the company are kept in either San Francisco or in the City of New York, where there is a financial office.

This company has never had any property (except the office furniture as have been noted) or carried on any business in the State of Kentucky.

The Company has never declared any dividend on its stock.

Also, the total length of the entire line or lines, as above, operated, owned, leased or controlled, as above, elsewhere than in this State, 5,106.40 miles.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in this State for twelve months next before November 15, 1892. Gross income, none; net income or earnings, none.

State the entire gross and net income or earnings received by the said corporation, company or association, on business done in this State and elsewhere for the same length of time.

Gross income, \$44,869,399.13; net income or earnings, \$77,759.70.

C. P. HUNTINGTON.

STATE OF NEW YORK }  
CITY AND COUNTY OF NEW YORK } SS.:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Collis P. Huntington, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 30th day of November, 1897.

WILLIAM SHILLABER,  
*Notary Public, New York County.*

I, S. W. Hager, Auditor of Public Accounts in and for the State of Kentucky, do hereby certify that the foregoing is a true and correct copy of the report filed in this office as of November 15, 1892, by the Southern Pacific Company, for the taxes of 1893.

Given under my hand this the 27th day of August, 1907.

S. W. HAGER,  
*Auditor of Public Accounts,*  
State of Kentucky.

## EXHIBIT A.

### SOUTHERN PACIFIC COMPANY.

Statement of Capital Assets, September 30, 1892.

(Annual Report, 1891, page 31, Table 2, and page 34, Table 4.)

#### STOCK.

(Face value \$100 each.)

- \*651,149 shares of stock of Southern Pacific R. R. Co. of California.
- \*199,926 shares of stock of Southern Pacific R. R. Co. of Arizona.
- \*68,863 shares of stock of Southern Pacific R. R. of New Mexico.
- \*59,930 shares of stock of South Pacific Coast R'y.
- \*129,967 shares of stock of Northern Railway Company.
- \*12,775 shares of stock of Northern California Railway Company.
- \*149,940 shares of stock of Morgan's Louisiana & Texas R. R. and S. S. Co.
- \*33,100 shares of stock of Louisiana Western R. R. Co.
- \*49,975 shares of stock of Texas & New Orleans R. R. Co. of 1874.
- \*265,122 shares of stock of Galveston, Harrisburg & San Antonio R'y Co.
- \*6,080 shares of stock of New York, Texas & Mexican R'y Co.
- 10,080 shares of stock of Austin & Northwestern R. R. Co.
- 41,721 shares of stock of Mexican International R. R. Co.
- 1,363 shares of Miscellaneous stocks.

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1,676,991 shares, total.

\*Exchanged for the common stock of the Southern Pacific Company reported outstanding in the report to the Auditor of Public Accounts of Kentucky.

## BONDS.

\$1,110,000.00 face value of bonds Galveston, Harrisburg & San Antonio Railway Co. Second Mortgage 6 per cent. (No interest has ever been earned on these bonds, and they are of little value. In 1893 it was agreed between the holders of these bonds that the fixed charge for interest accruing thereon should be waived, and that the interest should thereafter be paid thereon out of the surplus after payment of all prior charges.)

1,453,000.00 face value bonds Gulf, Western Texas & Pacific Railway Co. First Mortgage 5 per cent bonds. (These bonds are of little value, as the road does not pay its operating expenses. The deficit from operations for the year ending December 31, 1891, amounted to \$86,688.47. See Report 1891, page 86, Table B.)

There was received on account of the above stocks and bonds owned for the year ending December 31, 1891 (page 36, Table 6):

Dividends on stocks-----	\$12,721.00
Interest on bonds -----	6,054.17

Total-----	\$18,775.17
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which has been included in the Profit and Loss Account for the year. (Exhibit B.)

## EXHIBIT A.

## OTHER PROPERTY.

(Annual Report, 1891, page 63, Table 30.)

Steamships running between New York and New Orleans:

S. S. El Dorado -----	3,531 tons.	S. S. El Mar -----	3,531 tons.
S. S. El Monte -----	3,531 tons.	S. S. El Sol -----	4,522 tons.
S. E. El Paso -----	3,531 tons.		

These steamships are registered in New York.

Steamships and barges running on Sacramento River:

Steamer Herald -----	204 tons.	Steamer D. E. Knight,	
Steamer D. E. Knight-----	217 tons.	No. 2 -----	248 tons.
Barge Acme -----	295 tons.	Barge Oroville -----	800 tons.
Barge Nicolaus -----	700 tons.	Barge Yuba City -----	700 tons.

The gross receipts and net income derived from the rental of the above steamships, and from the operation of the Sacramento River Steamer Lines, are included in statement of Profit and Loss, Exhibit B.

One-half interest in cattle cars, on which about \$30,000 has been paid.

Real estate in San Francisco.

## EXHIBIT B.

## SOUTHERN PACIFIC COMPANY.

Statement of Profit and Loss Account, August 31, 1892.

(Annual Report, 1891, page 36, Table 6.)

## RECEIPTS.

Net profit under omnibus lease, Table 14.....	\$241,930 93
Net profit operating Northern Railway, Table 13.....	63,505 76
Net profit operating South Pacific Coast Railway, Table 17.....	124,816 72
Net profit operating California Pacific R. R., Table 21.....	113,069 95
Rental for steamships .....	341,000 00
Contribution to sinking fund for steamship bonds.....	75,000 00
Interest received on open accounts.....	30,014 92
Dividends received on stocks owned.....	12,721 00
Interest received on bonds owned.....	6,054 17
Miscellaneous receipts .....	2,400 00
Total.....	\$1,010,513 45

## EXHIBIT B.

## EXPENDITURES.

Deficit operating Northern California R'y, Table 16.....	\$50,793 70
Deficit operating Oregonian R. R., Table 20.....	17,431 16
Deficit operating Marysville Steamboat Line.....	18,150 62
Interest on steamship bonds.....	114,000 00
Sinking fund requirement steamship mortgage.....	75,000 00
Insurance fund requirement steamship mortgage.....	95,000 00
Miscellaneous expenses .....	2,900 00
Readjustment of payment to be made by C. P. R. R. Co. under Thurman Act .....	70,330 92
Deficit in operating Oregon & California R. R.....	489,147 35
Total.....	\$932,753 75
Receipts in excess of expenditures.....	77,759 70

A copy, attest:

S. W. HAGER, Auditor.

Filed in County Court October 27, 1908.

REPORT  
OF THE  
SOUTHERN PACIFIC COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY.  
SEPTEMBER 15, 1893.

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ARTICLE III.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every Railway Company or Corporation, and every incorporated bank, trust company, guarantee or security company, gas company, water company, bridge company, ferry company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace car company, dining car company, sleeping car company, chair car company, and every other like company, corporation or association, and also every other corporation, company or association having or exercising any special or exclusive privilege or franchise, not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The place or places where such local taxes are to be paid, and how apportioned, where more than one jurisdiction is entitled to share of such tax, shall be determined by the Auditor,

Treasurer and Secretary of State, who are hereby constituted a Board of Valuation and Assessment for said purpose, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time as the business of the board may require.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, the corporations, companies and associations mentioned in the next preceding section, except banks and trust companies, whose statements shall be filed as hereinafter required by Section 16 of this article, shall annually, *between the fifteenth day of September and first day of October*, make and deliver to the Auditor of Public Accounts of this State, a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz:

Name of corporation: Southern Pacific Company.

Name the principal place of business of the corporation, company, or association you represent: San Francisco, California.

Give the name and official position of the officer making this report: Name, Collis P. Huntington; Position, President.

The kind of business in which the said corporation, company, or association is engaged: The operating of associated lines.

The amount of capital stock, preferred and common, of the said corporation, company, or association, as of date September 15, 1893: Preferred, none; common, \$119,047,170.00.

Number of shares, preferred and common, composing the capital stock of the said corporation, company, or association, on September 15, 1893: Preferred, none; Common, 1,190,471.

Amount of capital stock, as above, paid up, \$119,047,-170.00.

Par value of the preferred stock, as above, none.

Par value of the common stock, as above, \$100.00 per share.

Real value of the stock, as above. Preferred, none; common, impossible to say.

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before September 15, 1893: \$37 $\frac{3}{4}$  per share is highest of which I have any knowledge.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company, or association, on September 15, 1893: Surplus fund, none on hand; undivided profits, none on hand; value of all other assets, impossible to state. See Exhibit "A" in respect to assets and Exhibit "B" in respect to profits.

State the total amount of indebtedness as principal, of the said corporation, company, or association, on September 15, 1893: \$28,448,994.29 excluding capital stock.

Bonded indebtedness, \$2,929,000.00; Rate of interest paid, 6 per cent.

Other indebtedness, \$25,519,994.20; Amount of interest paid, \$131,740.00.

Total indebtedness, \$28,448,994.29.

State separately the total amount of gross and net earnings, or income of the said corporation, company, or association, including interest on investments, and income from all other sources for twelve months next before September 15, 1893.

Gross earnings or income .....	\$42,296,216.46
Less expenses,	
Salaries .....	\$.....
Wages .....	\$.....
Interest .....	\$.....
Dividends .....	\$.....
Enlargement of plant .....	\$.....
Other expenses .....	\$.....
Total .....	\$42,961,255.45
Deficit .....	\$665,038.99

Amount and kind of tangible property in this State owned by the said corporation, company, or association, on September 15, 1893.

Amount of tangible property: Less than \$100.00.

Kind of tangible property: Office furniture.

State where the tangible property aforesaid is situated, assessed or liable to assessment. County, Jefferson.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale. Less than \$100.00.

State the total length of the entire line or lines operated, owned, leased, or controlled in this State by the said corporation, company, or association.

Specify in detail the entire length of the line or lines operated, owned, leased, or controlled, as above, in each county, city, town, and taxing district in this State. (Give the length of line in each county, town, or taxing district separately.) None.

#### REMARKS:

All meetings of stockholders and directors are held in San Francisco, Cal.

All stocks, bonds, and other securities of the company are kept in either San Francisco or in the City of New York, where there is a financial office.

The company has never had any property (except the office furniture as have been noted) or carried on any business in the State of Kentucky.

The company has not declared any dividend on its stock.

Also, the total length of the entire line or lines, as above, operated, owned, leased or controlled, as above, elsewhere than in this State, 5,172.18 miles.

State the entire net and gross income or earnings received by the said corporation, company, or association in this State and out of this State, on business done in this State for twelve months next before September 15, 1893: Gross income, none; net income or earnings, none.

State the entire gross and net income or earnings received by the said corporation, company, or association, on business done in this State and elsewhere for the same length of time.

Gross income, \$42,296,216.46; deficit, \$665,038.99.

C. P. HUNTINGTON.

STATE OF NEW YORK

CITY AND COUNTY OF NEW YORK

} SS.:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Collis P. Huntington, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 30th day of November, 1897.

WILLIAM SHILLABER,  
*Notary Public, New York County.*

I, S. W. Hager, Auditor of Public Accounts in and for the State of Kentucky, do hereby certify that the foregoing is a true and correct copy of the report filed in this

office as of September 15, 1893, by the Southern Pacific Company for the taxes of 1894.

Given under my hand this the 27th day of August, 1907.

S. W. HAGER  
Auditor of Public Accounts,  
State of Kentucky.

## EXHIBIT A.

### SOUTHERN PACIFIC COMPANY.

Statement of Capital Assets, August 31, 1893.

(Annual Report, 1892, page 34, Table 4, page 31, Table 2.)

### STOCK.

(Face value \$100 per share.)

- \*651,149 shares of stock of Southern Pacific R. R. of California.
- \*199,926 shares of stock of Southern Pacific R. R. of Arizona.
- \*68,863 shares of stock of Southern Pacific R. R. of New Mexico.
- \*59,930 shares of stock of South Pacific Coast R'y Co.
- \*127,007 shares of stock of Northern R'y Co.
- \*12,775 shares of stock of Northern California R'y Co.
- \*149,950 shares of stock of Morgan's Louisiana & Texas R. R. & S. S. Co.
- \*33,100 shares of stock of Louisiana Western R. R. Co.
- \*49,975 shares of stock of Texas & New Orleans R. R. Co. of 1874.
- \*264,222 shares of stock of Galveston, Harrisburg & San Antonio R. R. Co.
- \*6,080 shares of stock of New York, Texas & Mexican R'y Co.
- 10,000 shares of stock of Austin & Northwestern R. R. Co.
- 2,000 shares of stock of Central Texas & Northwestern R. R. Co.
- 40,000 shares of stock of Oregon & California R. R. Co.
- 11,585 shares of stock of California Pacific R. R. Co.
- 41,721 shares of stock of Mexican International R. R. Co.
- 1,363 shares of Miscellaneous stocks.

1,730,726 total shares.

\*Exchanged for the common stock of the Southern Pacific Company reported outstanding in the report to the Auditor of Public Accounts of Kentucky.

## BONDS.

- \$2,224,000.00 face value Gulf, Western Texas & Pacific R. R. Co. First Mortgage. These bonds are of little value, as the road does not pay its operating expenses. The deficit from operations for the year ending December 31, 1892, amounted to \$163,031.33. (See page 87, Table B.)
- 1,110,000.00 face value Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage 6 per cent. (No interest has ever been earned on these bonds, and they are of little value. In 1893 it was agreed between the holders of these bonds that the fixed charge for interest accruing thereon should be waived, and that the interest should be thereafter paid thereon out of the surplus earnings, after payment of all prior charges.)

There was received on account of the above stocks and bonds owned for the year ending December 31, 1892, page 36, Table 6:

Dividends on stocks.....	\$2,560.00
Interest on bonds.....	72,630.00
Total.....	<u>\$75,210.00</u>

which has been included in the Profit and Loss Account for the year. (Exhibit B.)

## OTHER PROPERTY.

(Annual Report 1892, page 63, Table 30.)

Steamships running between New York and New Orleans, viz.:

S. S. El Dorado .....	3,531 tons.	S. S. El Sud .....	4,659 tons.
S. S. El Monte .....	3,531 tons.	S. S. El Norte .....	4,659 tons.
S. E. El Paso .....	3,531 tons.	S. S. El Sol .....	4,522 tons.
S. S. El Mar .....	3,531 tons.	S. S. El Mar .....	3,531 tons.
S. S. Tug El Toro.....	130 tons.		

These steamships are registered in New York.

Steamships and barges running on Sacramento River:

Steamer Herald .....	204 tons.	Steamer D. E. Knight,	
Steamer D. E. Knight.....	217 tons.	No. 2 .....	248 tons.
Barge Acme .....	295 tons.	Barge Oroville .....	800 tons.
Barge Nicolaus .....	700 tons.	Barge Yuba City.....	700 tons.

The gross receipts and net income derived from the rental of the above steamships, and from the operation of the Sacramento River Steamer Line, are included in statement of Profit and Loss, Exhibit B.

One-half interest in cattle cars, on which about \$30,000 has been paid

Real estate in San Francisco and Oakland, Cal.

## EXHIBIT B.

## SOUTHERN PACIFIC COMPANY.

(Statement of Profit and Loss Account, August 31, 1893.)

(Annual Report, 1892, page 36, Table 6.)

## RECEIPTS.

Net profits under omnibus lease, Table 14.....	\$267,086 51
Net profit operating Southern Pacific Coast R'y, Table 17.....	62,746 38
Net profit operating California Pacific R. R., Table 21....	40,551 95
Rental for steamships .....	397,618 56
Contribution to sinking fund for steamship bonds.....	75,000 00
Dividends received on stocks owned.....	2,560 00
Interest on bonds owned.....	72,650 00
Miscellaneous receipts .....	2,400 00
Total receipts.....	\$920,613 40

## EXHIBIT B.

## EXPENDITURES.

Deficit operating Northern California R'y, Table 16.....	\$28,899 36
Deficit operating Central Pacific R. R., Table 18.....	498,126 53
Deficit operating Oregonian Railroad, Table 20.....	4,789 76
Deficit operating Marysville Steamboat Line.....	22,732 42
Interest on steamship bonds.....	131,740 00
Sinking fund requirement, steamship mortgage.....	75,000 00
Insurance fund requirement, steamship mortgage.....	115,425 25
Miscellaneous expenses .....	384 10
Premium on steamship bonds redeemed.....	3,550 00
Interest on floating debt .....	12,196 55
Payment to Central Pacific R. R. Co. for account of re- newal funds .....	251,628 28
Deficit in operating Oregon & California R. R.....	441,480 14
Total expenditures.....	\$1,585,952 39
Expenditures in excess of receipts.....	665,038 99

A copy, attest:

S. W. HAGER, Auditor.

Filed in County Court October 27, 1908.

REPORT  
OF THE  
SOUTHERN PACIFIC COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY.  
SEPTEMBER 15, 1894.

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ARTICLE III.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every Railway Company or Corporation, and every incorporated bank, trust company, guarantee or security company, gas company, water company, bridge company, ferry company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace car company, dining car company, sleeping car company, chair car company, and every other like company, corporation or association, and also every other corporation, company or association having or exercising any special or exclusive privilege or franchise, not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The place or places where such local taxes are to be paid, and how apportioned, where more than one jurisdiction is entitled to share of such tax, shall be determined by the Auditor,

Treasurer and Secretary of State, who are hereby constituted a Board of Valuation and Assessment for said purpose, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time as the business of the board may require.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, the corporations, companies and associations mentioned in the next preceding section, except banks and trust companies, whose statements shall be filed as hereinafter required by Section 16 of this article, shall annually, *between the fifteenth day of September and first day of October*, make and deliver to the Auditor of Public Accounts of this State, a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz:

Name of corporation: Southern Pacific Company.

Name the principal place of business of the corporation, company, or association you represent: San Francisco, California.

Give the name and official position of the officer making this report: Name, Collis P. Huntington; Position, President.

The kind of business in which the said corporation, company, or association is engaged: The operating of associated lines.

The amount of capital stock, preferred and common, of said corporation, company, or association, as of date September 15, 1894: Preferred, none; common, \$120,934,170.00.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or association, on September 15, 1894: Preferred, none; Common, 1,209,341.

Amount of capital stock, as above, paid up, \$120,934,170.00.

Par value of the preferred stock, as above, none.

Par value of the common stock, as above, \$100.00 per share.

Real value of the stock, as above. Preferred, none; common, impossible to say.

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before September 15, 1894: \$25.00 per share is the highest of which I have any knowledge.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company, or association, on September 15, 1894: Surplus fund, none; undivided profits, none; value of all other assets, impossible to state. See Exhibit "A" in respect to assets and Exhibit "B" in respect to profits.

State the total amount of indebtedness, as principal, of the said corporation, company, or association, on September 15, 1894: \$19,237,621.13, excluding capital stock.

Bonded indebtedness, \$2,858,000.00; Rate of interest paid, 6 per cent.

Other indebtedness, \$16,379,621.13; Amount of interest paid, \$171,480.00.

Total indebtedness, \$19,237,621.13.

State separately the total amount of gross and net earnings, or income of the said corporation, company, or association, including interest on investments, and income from all other sources for twelve months next before September 15, 1894.

Gross earnings or income.....	\$45,599,753.78
Less expenses,	
Salaries.....\$.....	
Wages.....\$.....	
Interest.....\$.....	
Dividends.....\$.....	
Enlargement of plant...\$.....	
Other expenses.....\$.....	
Total.....	\$44,492,887.42
†Net income .....	\$1,106,866.36

Amount and kind of tangible property in this State owned by the said corporation, company, or association, on September 15, 1894.

Amount of tangible property: Less than \$100.00.

Kind of tangible property: Office furniture.

State where the tangible property aforesaid is situated, assessed or liable to assessment. County, Jefferson.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale: Less than \$100.00.

State the total length of the entire line or lines operated, owned, leased, or controlled in this State by the said corporation, company, or association.

Specify in detail the entire length of the line or lines operated, owned, leased, or controlled, as above, in each county, city, town, and taxing district in this State. (Give the length of line in each county, town, or taxing district separately.) None.

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†Provided the amounts advanced to some of the companies is repaid; if not, this net will be entirely effaced.

## REMARKS:

All meetings of stockholders and directors are held in San Francisco, Cal.

All stocks, bonds, and other securities of the company are kept in either San Francisco or in the City of New York, where there is a financial office.

The company has never had any property (except the office furniture as have been noted) or carried on any business in the State of Kentucky.

The company has not declared any dividend on its stock.

Also, the total length of the entire line or lines, as above, operated, owned, leased or controlled, as above, elsewhere than in this State, 5,254.43 miles.

State the entire net and gross income or earnings received by the said corporation, company, or association, in this State and out of this State, on business done in this State for twelve months next before September 15, 1894: Gross income, none; net income or earnings, none.

State the entire gross and net income or earnings received by the said corporation, company, or association, on business done in this State and elsewhere for the same length of time.

Gross income, \$45,599,753.78; net income or earnings, \$1,106,866.36.

C. P. HUNTINGTON.

STATE OF NEW YORK	} SS.:
CITY AND COUNTY OF NEW YORK	

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Collis P. Huntington, whose signature is attached thereto, and made oath that the statements made in an-

swer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 30th day of November, 1897.

WILLIAM SHILLABER,  
*Notary Public, New York County.*

I, S. W. Hager, Auditor of Public Accounts in and for the State of Kentucky, do hereby certify that the foregoing is a true and correct copy of the report filed in this office as of September 15, 1894, by the Southern Pacific Company for the taxes of 1895.

Given under my hand this the 27th day of August, 1907.

S. W. HAGER  
*Auditor of Public Accounts,  
State of Kentucky.*

## EXHIBIT A.

### SOUTHERN PACIFIC COMPANY.

Statement of Capital Assets, August 31, 1894.

(Annual Report, 1893, page 36, Table 4.)

#### STOCK.

(Face value \$100 per share.)

- \*651,149 shares of stock of Southern Pacific R. R. of California.
- \*199,926 shares of stock of Southern Pacific R. R. of Arizona.
- \*68,863 shares of stock of Southern Pacific R. R. of New Mexico.
- \*59,930 shares of stock of South Pacific Coast R'y Co.
- \*127,007 shares of stock of Northern R'y Co.
- \*12,775 shares of stock of Northern California R'y Co.
- \*149,950 shares of stock of Morgan's Louisiana & Texas R. R. & S. S. Co.
- \*33,100 shares of stock of Louisiana Western R. R. Co.
- \*49,975 shares of stock of Texas & New Orleans R. R. Co. of 1874.
- \*265,222 shares of stock of Galveston, Harrisburg & San Antonio R. R. Co.

\*6,080 shares of stock of New York, Texas & Mexican R'y Co.  
 10,080 shares of stock of Austin & Northwestern R. R. Co.  
 2,000 shares of stock of Central Texas & Northwestern R. R. Co.  
 40,000 shares of stock of Oregon & California R. R. Co.  
 11,585 shares of stock of California Pacific R. R. Co.  
 41,721 shares of stock of Mexican International R. R. Co.  
 1,363 shares of Miscellaneous stocks.

1,730,726 total shares.

\*Exchanged for the common stock of the Southern Pacific Company reported outstanding in the report to the Auditor of Public Accounts of Kentucky.

#### BONDS.

\$2,224,000.00 face value Gulf, Western Texas & Pacific R. R. Co. First Mortgage. (This road did not pay its operating expenses. Deficit from operations for the year ending December 31, 1892, \$163,131.33.) See page 87, Table B.  
 1,110,000.00 face value Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage 6 per cent. (No interest has ever been earned on these bonds, and they are of little value. In 1893 it was agreed between the holders of these bonds that the fixed charge for interest accruing thereon should be waived, and that the interest should be thereafter paid thereon out of the surplus earnings, after payment of all prior charges.)  
 582,000.00 face value Southern Pacific R. R. Co. First Consolidated Mortgage 5 per cent bonds. (Market value about 90 per cent of their face value.)  
 1,000,000.00 face value Oregon & California First Mortgage 5 per cent. (Market value about 80 per cent of their face value.)

There was received on account of the above stocks and bonds owned for the year ending December 31, 1893, page 37, Table 4:

Dividends declared on stocks of proprietary coupons from net savings of former years .....	\$2,547,638.50
Interest on bonds.....	157,075.00
Total .....	\$2,704,713.50

which has been included in the Profit and Loss account for the year. (Exhibit B.)

## OTHER PROPERTY.

(Annual Report, 1893, page 65, Table 28.)

Steamships running between New York and New Orleans, viz.:

S. S. El Dorado -----	3,531 tons.	S. S. El Sud -----	4,659 tons.
S. S. El Monte -----	3,531 tons.	S. S. El Norte -----	4,659 tons.
S. E. El Paso -----	3,531 tons.	S. S. El Sol -----	4,522 tons.
S. S. El Mar -----	3,531 tons.	S. S. El Mar -----	3,531 tons.
S. S. Tug El Toro-----	130 tons.		

These steamships are registered in New York.

Steamships and barges running on Sacramento River:

Steamer Herald -----	204 tons.	Steamer D. E. Knight,	
Steamer D. E. Knight--	217 tons.	No. 2 -----	248 tons.
Barge Acme -----	295 tons.	Barge Oroville -----	800 tons.
Barge Nicolaus -----	700 tons.	Barge Yuba City-----	700 tons.

The gross receipts and net income derived from the rental of the above steamships, and from the operation of the Sacramento River Steamer Line, are included in statement of Profit and Loss, Exhibit B.

One-half interest in cattle cars, on which about \$30,000 has been paid.

Real estate in San Francisco and Oakland, Cal.

## MEMO. TO EXHIBIT A.

The above does not include 16,625 shares (face value \$100.00 each) of the capital stock of the Wells-Fargo Express Company.

The stock was received as a bonus from said Express Company in consideration of a contract for express privileges for a period of 21 years from January 1, 1894, over the property and leased lines of the Southern Pacific Company.

This stock represents compensation for the use of these lines by the Express Company, and is therefore a part of their earnings, and hence has been held in trust for said proprietary lines; but has in part been distributed between December 31, 1896, and June 30, 1897 (see Annual Report June 30, 1897, G. & S. A. R'y, page 74, Table C; H. & T. C. R. R., page 80, Table C; A. & N. N. W. R. R., page 81, Table B; C., T. & N. W. R. R. W., page 82, Table B, and F. W. & N. O. R'y, page 83, Table B); and the remainder is about to be distributed and will be distributed before the close of the business for the year ending June 30, 1898.

## EXHIBIT B.

## SOUTHERN PACIFIC COMPANY.

Statement of Profit and Loss Account, August 31, 1894.

(Annual Report, 1893, page 37, Table 4.)

## RECEIPTS.

Net profits under Omnibus Lease-----	\$264,713 78
Rental for steamships-----	579,154 03
Contribution to sinking fund for steamship bonds-----	75,000 00
Interest on bonds owned-----	157,075 00
Rentals from real estate in San Francisco-----	78,916 65
Profit operating Creosote Works, Oakland, Cal-----	22,786 55
Dividends on S. P. R. R. of California capital stock-----	1,953,448 50
Dividends on S. P. R. R. of N. M. capital stock-----	344,315 00
Dividends on T. & N. O. R. R. Co. capital stock-----	249,875 00
Miscellaneous-----	125 00
	<hr/>
	\$3,725,409 51

## EXPENDITURES.

Deficit operating Northern California R'y-----	\$22,232 28
Deficit operating Central Pacific R. R-----	575,282 78
Deficit operating Oregonian R. R-----	12,864 65
Deficit operating Marysville Steamboat Line-----	3,574 67
Deficit operating South Pacific Coast R'y-----	205,980 80
Deficit operating California Pacific R. R-----	9,360 70
Interest on floating debt-----	120,384 89
Interest on steamship bonds-----	171,480 00
Sinking fund requirement steamship mortgage-----	75,000 00
Insurance fund requirement steamship mortgage-----	175,561 00
Renewal fund requirement steamship mortgage-----	12,227 76
Miscellaneous expenses-----	251 00
Premiums on bonds redeemed-----	3,550 00
Oregon & California R. R. rental (5 months)-----	2,083 33
Taxes on property owned-----	6,927 04
Expenses property owned-----	859 87
Interest account property owned-----	33,167 81
Adjustment of taxes under reassessment for 1885-----	17,315 53
Oregon & California R. R. reorganization payment-----	6,106 21
G. H. & S. A. R'y Western Division Second Mortgage bonds, depreciation in value, written off-----	721,500 00
Deficit in operating Oregon & California R. R-----	442,832 82
	<hr/>
Total expenditures-----	\$2,618,543 15
	<hr/>
Receipts in excess of expenditures-----	1,106,866 36

A copy, attest:

S. W. HAGER, Auditor.

Filed in County Court October 27, 1908.

REPORT  
OF THE  
SOUTHERN PACIFIC COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY.  
SEPTEMBER 15, 1895.

-----  
ARTICLE III.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every Railway Company or Corporation, and every incorporated bank, trust company, guarantee or security company, gas company, water company, bridge company, ferry company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace car company, dining car company, sleeping car company, chair car company, and every other like company, corporation or association, and also every other corporation, company or association having or exercising any special or exclusive privilege or franchise, not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The place or places where such local taxes are to be paid, and how apportioned, where more than one jurisdiction is entitled to share of such tax, shall be determined by the Auditor,

Treasurer and Secretary of State, who are hereby constituted a Board of Valuation and Assessment for said purpose, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time as the business of the board may require.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, the corporations, companies and associations mentioned in the next preceding section, except banks and trust companies, whose statements shall be filed as hereinafter required by Section 16 of this article, shall annually, *between the fifteenth day of September and first day of October*, make and deliver to the Auditor of Public Accounts of this State, a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz:

Name of corporation: Southern Pacific Company.

Name of principal place of business of the corporation, company, or association you represent: San Francisco, Cal.

Give the name and official position of the officer making this report: Name, Collis P. Huntington; Position, President.

The kind of business in which the said corporation, company or association is engaged: The operating of associated lines.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date September 15, 1895: Preferred, none; common, \$120,934,170.00.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or association, on September 15, 1895; Preferred, none; common, 1,209,341.

Amount of capital stock, as above, paid up, \$120,-  
934,170.00.

Par value of the preferred stock, as above: None.

Par value of the common stock, as above: \$100.00 per  
share.

Real value of the stock, as above: Preferred, none;  
Common, impossible to state.

Highest price at which the stock above mentioned was  
sold at a *bona fide* sale within twelve months next before  
September 15, 1895: \$26 $\frac{3}{4}$  per share is highest of which  
I have any knowledge.

Amount of surplus fund and undivided profits, and the  
value of all other assets of the said corporation, company  
or association, on September 15, 1895: Surplus fund,  
none on hand; Undivided profits, none on hand; Value  
of all other assets, impossible to state. See Exhibit "A"  
in respect to assets and Exhibit "B" in respect to profits.

State the total amount of indebtedness, as principal,  
of the said corporation, company or association, on Sep-  
tember 15, 1895: \$18,479,868.06, excluding capital stock.

Bonded indebtedness, \$2,715,000.00; Rate of interest  
paid, 6 per cent.

Other indebtedness, \$15,764,868.06; Amount of inter-  
est paid, \$167,220.00.

Total indebtedness, \$18,479,868.06.

State separately the total amount of gross and net  
earnings, or income of the said corporation, company or  
association, including interest on investments, and income  
from all other sources for twelve months next before  
September 15, 1895.

Gross earnings or income .....	\$40,150,638.87
Less expenses,	
Salaries .....	\$ .....
Wages .....	\$ .....
Interest .....	\$ .....
Dividends .....	\$ .....
Enlargement of plant .....	\$ .....
Other expenses .....	\$ .....
Total .....	<u>\$40,236,127.67</u>
Deficit .....	\$85,488.80

Amount and kind of tangible property in this State owned by the said corporation, company or association, on September 15, 1895:

Amount of tangible property: Less than \$100.00.

Kind of tangible property: Office furniture.

State where the tangible property aforesaid is situated, assessed or liable to assessment: County, Jefferson.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale: Less than \$100.00.

State the total length of the entire line or lines operated, owned, leased, or controlled in this State by the said corporation, company or association.

Specify in detail the entire length of the line or lines operated, owned, leased, or controlled, as above, in each county, city, town, and taxing district in this State. (Give the length of line in each county, town, or taxing district separately.) None.

#### REMARKS:

All meetings of stockholders and directors are held in San Francisco, Cal.

All stocks, bonds, and other securities of the company are kept in either San Francisco or in the City of New York, where there is a financial office.

The company has never had any property (except the office furniture) as have been noted, or carried on any business in the State of Kentucky.

The company has not declared any dividend on its stock.

Also, the total length of the entire line or lines, as above, operated, owned, leased, or controlled, as above, elsewhere than in this State, 5,294.08.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in this State for twelve months next before September 15, 1895. Gross income, none; Net income or earnings, none.

State the entire gross and net income or earnings received by the said corporation, company, or association, on business done in this State and elsewhere for the same length of time.

Gross income, \$40,150,638.87; deficit, \$85,488.80.

C. P. HUNTINGTON.

STATE OF NEW YORK

CITY AND COUNTY OF NEW YORK

} SS.:

This day personally appeared before the undersigned, a Notary Public, in and for the State and county aforesaid, Collis P. Huntington, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 30th day of November, 1897.

WILLIAM SHILLABER,

*Notary Public, New York County.*

I, S. W. Hager, Auditor of Public Accounts in and for the State of Kentucky, do hereby certify that the fore-

going is a true and correct copy of the report filed in this office as of September 15, 1895, by the Southern Pacific Company, for the taxes of 1896.

Given under my hand this, the 27th day of August, 1907.

S. W. HAGER,  
*Auditor of Public Accounts,*  
State of Kentucky.

## EXHIBIT A.

### SOUTHERN PACIFIC COMPANY.

Statement of Capital Assets, August 31, 1895.

(Annual Report, 1894, page 54, Table 3.)

### STOCK.

(Face value \$100 per share.)

- \*678,755 shares of stock of Southern Pacific R. R. of California.
- \*199,926 shares of stock of Southern Pacific R. R. of Arizona.
- \*68,863 shares of stock of Southern Pacific R. R. of New Mexico.
- \*59,930 shares of stock of South Pacific Coast R'y Co.
- \*127,022 shares of stock of Northern R'y Co.
- \*12,775 shares of stock of Northern California R'y Co.
- \*149,950 shares of stock of Morgan's Louisiana & Texas R. R. and S. S. Co.
- \*33,100 shares of stock of Louisiana Western R. R. Co.
- \*49,975 shares of stock of Texas & New Orleans R. R. Co. of 1874.
- \*269,041 shares of stock of Galveston, Harrisburg & San Antonio R. R. Co.
- \*6,080 shares of stock of New York, Texas & Mexican R'y Co.
- 10,080 shares of stock of Austin & Northwestern R. R. Co.
- 2,000 shares of stock of Central Texas & Northwestern R. R. Co.
- 40,000 shares of stock of Oregon & California R. R. Co.
- 17,946 shares of stock of California Pacific R. R. Co.
- 41,721 shares of stock of Mexican International R. R. Co.
- 1,371 shares of Miscellaneous stocks.

1,786,035 total shares.

\*Exchanged for the common stock of the Southern Pacific Company reported outstanding in the report to the Auditor of Public Accounts of Kentucky.

## BONDS.

- \$2,224,000.00 face value Gulf, Western Texas & Pacific R. R. Co. First Mortgage. (These bonds are of little value as the road does not pay its operating expenses. The deficit from operations for the year ending December 31, 1892, amounted to \$156,452.89.) See page 101, Table B.
- 1,110,000.00 face value Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage 6 per cent. (No interest has ever been earned on these bonds, and they are of little value. In 1893 it was agreed between the holders of these bonds that the fixed charges for interest accruing thereon should be waived, and that the interest should be thereafter paid thereon out of the surplus earnings, after payment of all prior charges.)
- 582,000.00 face value Southern Pacific R. R. of California First Consolidated Mortgage 5 per cent. (Market value about 85 per cent of their face value.)
- 1,097,000.00 face value Oregon & California R. R. First Mortgage 5 per cent bonds. (Market value about 75 per cent of their face value.)
- 70,000.00 face value Northern Pacific Terminal Co. First Mortgage 6 per cent. (Market value about par.)

There was received on account of the above stocks and bonds owned for the year ending December 31, 1894, page 55, Table 4:

Dividends on stocks-----	\$82,893.00
Interest on bonds-----	190,500.00
Total -----	\$273,393.00

which has been included in the Profit and Loss account for the year. Exhibit B.

## OTHER PROPERTY.

Annual Report 1894, page 77, Table 25.

Steamships running between New York and New Orleans, viz.:

S. S. El Dorado -----	3,531 tons.	S. S. El Sud -----	4,659 tons.
S. S. El Monte -----	3,531 tons.	S. S. El Norte -----	4,659 tons.
S. E. El Paso -----	3,531 tons.	S. S. El Sol -----	4,522 tons.
S. S. El Mar -----	3,531 tons.	S. S. El Mar -----	3,531 tons.
S. S. Tug El Toro---	130 tons.		

These steamships are registered in New York.

## Steamships and barges running on Sacramento River:

Steamer Herald -----	204 tons.	Steamer D. E. Knight,	
Steamer D. E. Knight---	217 tons.	No. 2 -----	248 tons.
Barge Acme -----	295 tons.	Barge Oroville -----	800 tons.
Barge Nicolaus -----	700 tons.	Barge Yuba City-----	700 tons.

The gross receipts and net income derived from the rental of the above steamships, and from the operation of the Sacramento River Steamer Line, are included in statement of Profit and Loss, Exhibit B.

One-half interest in cattle cars, on which about \$30,000 has been paid.

Real estate in San Francisco and Oakland, Cal.

## MEMO. TO EXHIBIT A.

The above does not include 16,625 shares (face value \$100.00 each) of the capital stock of the Wells-Fargo Express Company, on which dividends to the amount of \$40,730.00 were received during the year.

The stock was received as a bonus from said Express Company in consideration of a contract for express privileges for a period of 21 years from January 1, 1894, over the property and leased lines of the Southern Pacific Co.

This stock represents compensation for the use of these lines by the Express Company, and is therefore a part of their earnings, and hence has been held in trust for said proprietary lines; but has in part been distributed between December 31, 1896, and June 30, 1897 (see Annual Report June 30, 1897, G. & S. A. R'y, page 74, Table C; H. & T. C. R. R., page 80, Table C; A. & N. N. W. R. R., page 81, Table B; C. T. & N. W. R'y, page 82, Table B, and F. W. & N. O. R'y, page 83, Table B); and the remainder is about to be distributed, and will be distributed before the close of the business for the year ending June 30, 1898.

## EXHIBIT B.

## SOUTHERN PACIFIC COMPANY.

Statement of Profit and Loss Account, August 31, 1895.

(Annual Report for the year 1894, page 55, Table 4.)

## RECEIPTS.

Net profits under Omnibus Lease; Table 12-----	\$119,618 70
Net profit operating South Pacific Coast R'y, Table 15---	11,133 39
Net profit operating Marysville Steamboat Line-----	226 96
Rental for steamships -----	590,865 00

Contribution to sinking fund for steamship bonds-----	75,000 00
Interest on bonds owned-----	190,500 00
Rental from real estate in San Francisco-----	188,748 14
Profit operating Creosote Works, Oakland, Cal-----	6,134 82
Dividend on stock of S. P. R. R. of California-----	82,893 00
Miscellaneous -----	50,000 00
Total -----	<u>\$1,315,120 01</u>

## EXPENDITURES.

Deficit operating Northern California R'y, Table 14-----	\$3,942 29
Deficit operating California Pacific R. R-----	55,850 19
Interest on floating debt-----	257,369 58
Interest on steamship bonds-----	167,220 00
Sinking fund requirements steamship mortgage-----	75,000 00
Insurance fund requirements steamship mortgage-----	179,175 00
Renewal fund requirements steamship mortgage-----	14,175 00
Miscellaneous expenses -----	1,985 99
Premium on steamship bonds redeemed-----	3,550 00
Oregon and California R. R. rental-----	5,000 00
Central Pacific R. R. Co. rental-----	10,000 00
Taxes on property owned-----	16,615 99
Adjustment of taxes under re-assessment 1895-6-7-----	17,821 78
Adjustment in value of S. P. R. R. of California 5 per cent 1893 bonds -----	51,547 28
Deficit operating Oregon & California R. R-----	541,355 71
	<u>\$1,400,608 81</u>
Expenditures in excess of receipts-----	\$85,488 80

A copy, attest:

S. W. HAGER, Auditor.

Filed in County Court October 27, 1908.

REPORT  
OF THE  
SOUTHERN PACIFIC COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY  
SEPTEMBER 15, 1896.

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ARTICLE III.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every Railway Company or Corporation, and every incorporated bank, trust company, guarantee or security company, gas company, water company, bridge company, ferry company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace car company, dining car company, sleeping car company, chair car company, and every other like company, corporation or association, and also every other corporation, company or association having or exercising any special or exclusive privilege or franchise, not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The place or places where such local taxes are to be paid, and how apportioned, where more than one jurisdiction is entitled to share of such tax, shall be determined by the Auditor,

Treasurer and Secretary of State, who are hereby constituted a Board of Valuation and Assessment for said purpose, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time as the business of the board may require.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, the corporations, companies and associations mentioned in the next preceding section, except banks and trust companies, whose statements shall be filed as hereinafter required by Section 16 of this article, shall annually, *between the fifteenth day of September and first day of October*, make and deliver to the Auditor of Public Accounts of this State, a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz:

Name of corporation: Southern Pacific Company.

Name of principal place of business of the corporation, company, or association you represent: San Francisco, Cal.

Give the name and official position of the officer making this report: Name, Collis P. Huntington; Position, President.

The kind of business in which the said corporation, company or association is engaged: The operation of associated lines.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date September 15, 1896: Preferred, none; common, \$120,995,070.00.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or association, on September 15, 1895: Preferred, none; common, 1,209,950.

Amount of capital stock, as above, paid up, \$120,-  
995,070.00.

Par value of the preferred stock, as above: None.

Par value of the common stock, as above: \$100.00 per  
share.

Real value of the stock, as above. Preferred, none;  
common, impossible to state.

Highest price at which the stock above mentioned was  
sold at a *bona fide* sale within twelve months next before  
September 15, 1896: \$247 $\frac{1}{8}$  per share.

Amount of surplus fund and undivided profits, and the  
value of all other assets of the said corporation, company  
or association, on September 15, 1896: Surplus fund,  
none on hand; undivided profits, none on hand; value of  
all other assets, impossible to state. See Exhibit "A"  
in respect to assets and Exhibit "B" in respect to profits.

State the total amount of indebtedness, as principal,  
of the said corporation, company or association, on Sep-  
tember 15, 1896: \$16,281,924.89, excluding capital stock.

Bonded indebtedness, \$2,644,000.00; Rate of interest  
paid, 6 per cent.

Other indebtedness, \$13,637,924.89; Amount of inter-  
est paid, \$162,900.00.

Total indebtedness, \$16,281,924.89.

State separately the total amount of gross and net  
earnings, or income of the said corporation, company or  
association, including interest on investments, and in-  
come from all other sources for twelve months next be-  
fore September 15, 1896.

Gross earnings or income..... \$41,149,695.94  
Less expenses,

Salaries .....	\$.....
Wages .....	\$.....
Interest .....	\$.....
Dividends .....	\$.....
Enlargement of plant.....	\$.....
Other expenses .....	\$.....

Total..... \$42,021,539.75

Deficit ..... \$871,843.81

Amount and kind of tangible property in this State owned by the said corporation, company or association, on September 15, 1896:

Amount of tangible property: Less than \$100.00.

Kind of tangible property: Office furniture.

State where the tangible property aforesaid is situated, assessed or liable to assessment: County, Jefferson.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale: Less than \$100.00.

State the total length of the entire line or lines operated, owned, leased, or controlled in this State by the said corporation, company or association.

Specify in detail the entire length of the line or lines operated, owned, leased, or controlled, as above, in each county, city, town, and taxing district in this State. (Give the length of line in each county, town or taxing district separately.) None.

#### REMARKS:

All meeting of stockholders and directors are held in San Francisco, Cal.

All stocks, bonds and other securities of the company are kept in either San Francisco or in the City of New York, where there is a financial office.

The company has never had any property (except the office furniture) as have been noted, or carried on any business in the State of Kentucky.

The company has never declared any dividend on its stock.

Also, the total length of the entire line or lines, as above, operated, owned, leased or controlled, as above, elsewhere than in this State, 5,342.87.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in

this State for twelve months next before September 15, 1896. Gross income, none; net income or earnings, none.

State the entire gross and net income or earnings received by the said corporation, company, or association, on business done in this State and elsewhere for the same length of time. Gross income, \$41,149,695.94; deficit, \$871,843.81.

C. P. HUNTINGTON.

STATE OF NEW YORK }  
CITY AND COUNTY OF NEW YORK } SS.:

This day personally appeared before the undersigned, a Notary Public, in and for the State and county aforesaid, Collis P. Huntington, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 30th day of November, 1897.

WILLIAM SHILLABER,  
*Notary Public, New York County.*

I, S. W. Hager, Auditor of Public Accounts in and for the State of Kentucky, do hereby certify that the foregoing is a true and correct copy of the report filed in this office as of September 15, 1896, by the Southern Pacific Company, for the taxes of 1897.

Given under my hand this, the 27th day of August, 1907.

S. W. HAGER,  
*Auditor of Public Accounts,*  
State of Kentucky.

## EXHIBIT A.

## SOUTHERN PACIFIC COMPANY.

Statement of Capital Assets, August 31, 1896.

(Annual Report, 1895, page 60, Table 26.)

## STOCK.

(Face value \$100 per share.)

- \*681,622 shares of stock of Southern Pacific R. R. of California.
  - \*199,926 shares of stock of Southern Pacific R. R. of Arizona.
  - \*68,863 shares of stock of Southern Pacific R. R. of New Mexico.
  - \*59,930 shares of stock of South Pacific Coast R'y Co.
  - \*127,022 shares of stock of Northern R'y Co.
  - \*12,775 shares of stock of Northern California R'y Co.
  - \*149,950 shares of stock of Morgan's Louisiana & Texas R. R. & S. S. Co.
  - \*33,100 shares of stock of Louisiana Western R. R. Co.
  - \*49,975 shares of stock of Texas & New Orleans R. R. Co. of 1874.
  - \*270,056 shares of stock of Galveston, Harrisburg & San Antonio R. R. Co.
  - \*6,080 shares of stock of New York, Texas & Mexican R'y Co.
  - \*959,840 shares of stock of Houston & Texas Central R. R.
  - 3,000 shares of stock of Fort Worth & New Orleans R'y.
  - 10,080 shares of stock of Austin & Northwestern R. R. Co.
  - 2,000 shares of stock of Central Texas & Northwestern R. R. Co.
  - 40,000 shares of stock of Oregon & California R. R. Co.
  - 179,463 shares of stock of California Pacific R. R. Co.
  - 41,721 shares of stock of Mexican International R. R. Co.
  - 1,363 shares of Miscellaneous stocks.
- 
- 1,871,393 total shares.

\*Exchanged for the common stock of the Southern Pacific Company reported outstanding in the report to the Auditor of Public Accounts of Kentucky.

## BONDS.

\$2,224,000.00 face value Gulf, Western Texas & Pacific R. R. Co. First Mortgage. (These bonds are of little value, as the road does not pay its operating expenses. The deficit from operations for the year ending December 31, 1895, amounted to \$154,497.67.) See page 33, Table 2.

- 1,110,000.00 face value Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage 6 per cent. (No interest has ever been earned on these bonds, and they are of little value. In 1893 it was agreed between holders of these bonds that the fixed charge for interest accruing thereon should be waived, and that the interest should be thereafter paid thereon out of the surplus earnings, after payment of all prior charges.)
- 537,000.00 face value Southern Pacific R. R. of California First Consolidated Mortgage 5 per cent. (Market value about 85 per cent of their face value.)
- 97,000.00 face value Oregon & California R. R. first mortgage 5 per cent bonds. (Market value about 75 per cent of their face value.)
- 648,000.00 face value Fort Worth & New Orleans R'y First Mortgage 6 per cent. (Market value about par.)

There was received on account of the above stocks and bonds owned for the year ending December 31, 1895, page 61, Table 27:

Dividends on stocks.....	None.
Interest on bonds.....	\$202,101 35
Total .....	\$202,101 35

which has been included in the Profit and Loss account for the year. (Exhibit B.)

#### OTHER PROPERTY.

(Annual Report, 1895, page 55, Table 22.)

Steamships running between New York and New Orleans, viz.:

S. S. El Dorado .....	3,531 tons.	S. S. El Sud .....	4,659 tons.
S. S. El Monte .....	3,531 tons.	S. S. El Norte .....	4,659 tons.
S. S. El Paso .....	3,531 tons.	S. S. El Sol .....	4,522 tons.
S. S. El Mar .....	3,531 tons.	S. S. El Mar .....	3,531 tons.
S. S. Tug El Toro---	130 tons.		

These steamships are registered in New York.

Steamships and barges running on Sacramento River:

Steamer Herald .....	204 tons.	Steamer D. E. Knight,	
Steamer D. E. Knight..	217 tons.	No. 2 .....	248 tons.
Barge Acme .....	295 tons.	Barge Oroville .....	800 tons.
Barge Nicolaus .....	700 tons.	Barge Yuba City.....	700 tons.

The gross receipts and net income derived from the rental of the above steamships, and from the operation of the Steamer Line, are included in statement of Profit and Loss, Exhibit B.

One-half interest in cattle cars, on which about \$30,000 has been paid.

Real estate in San Francisco and Oakland, Cal.

#### MEMO. TO EXHIBIT A.

The above does not include 17,500 shares (face value \$100.00 each) of the capital stock of the Wells-Fargo Express Company, on which dividends to the amount of \$102,375.00 were received during the year.

The stock was received as a bonus from said Express Company in consideration of a contract for express privileges for a period of 21 years from January 1, 1894, over the property and leased lines of the Southern Pacific Company.

This stock represents compensation for the use of these lines by the Express Company, and is therefore a part of their earnings, and hence has been held in trust for said proprietary lines; but has in part been distributed between December 31, 1896, and June 30, 1897 (see Annual Report June 30, 1897; G. H. & S. A. R'y, page 74, Table C; H. & T. C. R. R., page 80, Table C; A. & N. N. W. R. R., page 81, Table B; C. T. & N. W. R. R. Co., page 82, Table B, and F. W. & N. O. R'y, page 83, Table B); and the remainder is about to be distributed and will be distributed before the close of the business for the year ending June 30, 1898.

#### EXHIBIT B.

##### SOUTHERN PACIFIC COMPANY.

Statement of Profit and Loss Account, August 31, 1896

(Annual Report, 1895, page 61, Table 27.)

##### RECEIPTS.

Net profits under Omnibus Lease, Table 2.....	\$208,365 61
Rental from steamships.....	397,515 00
Rental from real estate in San Francisco.....	140,974 36
Interest on bonds owned.....	202,101 35
Profits on bonds sold.....	13,000 00
Profit operating Creosote Works, Oakland, Cal.....	22,056 55
Contribution to sinking fund for steamship bonds.....	75,000 00
Collection of old accounts.....	249 75
Total receipts .....	<u>\$1,059,262 62</u>

## EXPENDITURES.

Taxes .....	\$18,668 04
Central Pacific R. R. rental.....	10,000 00
Oregon & California R. R. rental.....	5,000 00
Deficit operating Marysville Steamboat Line.....	7,475 96
Interest on steamship bonds.....	162,900 00
Interest on open accounts.....	186,804 10
Sinking fund requirement steamship mortgage.....	75,000 00
Premium on steamship bonds redeemed.....	3,756 00
Deficit operating California Pacific R. R., Table 4.....	219,858 52
Deficit operating South Pacific Coast R'y, Table 2.....	207,854 03
Deficit operating Northern California R'y, Table 2.....	34,087 45
Readjustment in values floating equipment.....	64,400 00
Taxes paid by S. P. Co. under re-assessment chargeable to operations of years 1885-6-7.....	81,491 10
Readjustment in values of securities owned.....	63,000 00
Deficit in operating Oregon & California.....	790,811 23
	<hr/>
	\$1,931,106 43

Expenditures in excess of receipts..... 871,843 81

A copy, attest:

S. W. HAGER, Auditor.

REPORT  
OF THE  
SOUTHERN PACIFIC COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY.  
SEPTEMBER 15, 1897.

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ARTICLE III.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every Railway Company or Corporation, and every incorporated bank, trust company, guarantee or

security company, gas company, water company, bridge company, ferry company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace car company, dining car company, sleeping car company, chair car company, and every other like company, corporation or association, and also every other corporation, company or association having or exercising any special or exclusive privilege or franchise, not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The place or places where such local taxes are to be paid, and how apportioned, where more than one jurisdiction is entitled to share of such tax, shall be determined by the Auditor, Treasurer and Secretary of State, who are hereby constituted a Board of Valuation and Assessment for said purpose, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time as the business of the board may require.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, the corporations, companies and associations mentioned in the next preceding section, except banks and trust companies, whose statements shall be filed as hereinafter required by Section 16 of this article, shall annually, *between the fifteenth day of September and first day of October*, make and deliver to the Auditor of Public Accounts of this State, a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz:

Name of corporation: Southern Pacific Company.

Name the principal place of business of the corporation, company or association you represent: San Francisco, California.

Give the name and official position of the officer making this report: Name, Collis P. Huntington; Position, President.

The kind of business in which the said corporation, company or association is engaged: The operating of associated lines.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date September 15, 1897: Preferred, none; Common, \$120,995,070.00.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or association, on September 15, 1897: Preferred, none; Common, 1,209,950.

Amount of capital stock, as above, paid up, \$120,995,070.00.

Par value of the preferred stock, as above: None.

Par value of the common stock, as above: \$100.00 per share.

Real value of the stock, as above: Preferred, none; Common, impossible to say.

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before September 15, 1897: \$22¾ per share.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company or association, on September 15, 1897: Surplus fund, none on hand; Undivided profits, none on hand; Value of all other assets, impossible to state. See Exhibit "A" in respect to assets, and Exhibit "B" in respect to profits.

State the total amount of indebtedness, as principal, of the said corporation, company or association, on September 15, 1897: \$18,876,338.16, excluding capital stock.

Bonded indebtedness, \$2,572,000.00; Rate of interest paid, 6 per cent.

Other indebtedness, \$16,304,338.16; Amount of interest paid, \$235,800.00.

Total indebtedness, \$18,876,338.16.

State separately the total amount of gross and net earnings, or income of the said corporation, company, or association, including interest on investments, and income from all other sources for twelve months next before September 15, 1897.

Gross earnings or income..... \$58,778,142.70

Less expenses,

Salaries.....\$.....

Wages.....\$.....

Interest.....\$.....

Dividends.....\$.....

Enlargement of plant...\$.....

Other expenses.....\$.....

Total..... \$59,320,377.41

Deficit..... \$542,234.71

Amount and kind of tangible property in this State owned by the said corporation, company or association, on September 15, 1897:

Amount of tangible property: Less than \$100.00.

Kind of tangible property: Office furniture.

State where the tangible property aforesaid is situated, assessed or liable to assessment: County, Jefferson.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale: Less than \$100.00.

State the total length of the entire line or lines operated, owned, leased, or controlled in this State by the said corporation, company or association.

Specify in detail the entire length of the line or lines operated, owned, leased or controlled as above, in each county, city, town and taxing district in this State. (Give the length of line in each county, town or taxing district separately.) None.

### REMARKS:

All meetings of stockholders and directors are held in San Francisco, Cal.; all stocks, bonds, and other securities of the company are kept in either San Francisco or in New York City, where there is a financial office.

The company has never had any property (except the office furniture as have been noted) or carried on any business in the State of Kentucky.

The company has not declared a dividend on its stock.

Also, the total length of the entire line or lines, as above, operated, owned, leased or controlled, as above, elsewhere than in this State, 5,367.60 miles.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in this State for twelve months next before September 15, 1897. Gross income, none; net income or earnings, none.

State the entire gross and net income or earnings received by the said corporation, company or association, on business done in this State and elsewhere for the same length of time: Gross income, \$58,778. 142.70; deficit, \$542,234.71.

C. P. HUNTINGTON.

STATE OF NEW YORK }  
CITY AND COUNTY OF NEW YORK } SS.:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Collis P. Huntington, whose signature is attached

thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 30th day of November, 1897.

WILLIAM SHILLABER,  
*Notary Public, New York County.*

I, S. W. Hager, Auditor of Public Accounts in and for the State of Kentucky, do hereby certify that the foregoing is a true and correct copy of the report filed in this office as of September 15, 1897, by the Southern Pacific Company, for the taxes of 1898.

Given under my hand this the 27th day of August, 1907.

S. W. HAGER,  
*Auditor of Public Accounts,*  
State of Kentucky.

## EXHIBIT A.

### SOUTHERN PACIFIC COMPANY.

Statement of Capital Assets, August 31, 1897.

(Annual Report, 1897, page 61, Table 26.)

### STOCK.

(Face value \$100 per share.)

- 95,984 shares of stock of Houston & Texas Central R. R.
- 3,000 shares of stock of Fort Worth & New Orleans R'y.
- \*687,885 shares of stock of Southern Pacific R. R. of California.
- \*199,926 shares of stock of Southern Pacific R. R. of Arizona.
- \*68,863 shares of stock of Southern Pacific R. R. of New Mexico.
- \*59,930 shares of stock of South Pacific Coast R'y Co.
- \*127,022 shares of stock of Northern R'y Co.
- \*12,775 shares of stock of Northern California R'y Co.
- \*149,950 shares of stock of Morgan's Louisiana & Texas R. R. & S. S. Co.
- \*33,100 shares of stock of Louisiana Western R. R. Co.
- \*49,975 shares of stock of Texas & New Orleans R. R. Co. of 1874.
- \*270,056 shares of stock of Galveston, Harrisburg & San Antonio R. R. Co.

\*6,150 shares of stock of New York, Texas & Mexican R'y Co.  
 10,080 shares of stock of Austin & Northwestern R. R. Co.  
 2,000 shares of stock of Central Texas & Northwestern R. R. Co.  
 40,000 shares of stock of Oregon & California R. R. Co.  
 17,946 shares of stock of California Pacific R. R. Co.  
 41,721 shares of stock of Mexican International R. R. Co.  
 828 shares of Miscellaneous stocks.

1,877,191 total shares.

\*Exchanged for the common stock of the Southern Pacific Company reported outstanding in the report to the Auditor of Public Accounts of Kentucky.

#### BONDS.

\$2,224,000.00 face value Gulf, Western Texas & Pacific R. R. Co. First Mortgage. (These bonds are of little value, as the road does not pay its operating expenses. The deficit from operations for the year ending December 31, 1896, amounted to \$158,085.22.) See page 33, Table 2.

1,110,000.00 face value Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage 6 per cent. (No interest has ever been earned on these bonds, and they are of little value. In 1893 it was agreed between the holders of these bonds that the fixed charge for interest accruing thereon should be waived, and that the interest should be thereafter paid thereon out of the surplus earnings, after payment of all prior charges.)

1,241,000.00 face value Southern Pacific R. R. of California First Consolidated Mortgage 5 per cent. (Market value about 85 per cent of their face value.)

310,000.00 face value Oregon & California R. R. First Mortgage 5 per cent bonds. (Market value about 75 per cent of their face value.)

50,000.00 face value Sierra R'y Co. of California First Mortgage 6 per cent. (Market value unknown, as they are not listed or quoted.)

170,000.00 face value Gila Valley, Globe & Northern R'y Co. First Mortgage 5 per cent. (Market value unknown, as they are not listed or quoted.)

There was received on account of the above stocks and bonds owned for the 18 months ending June 30, 1897, page 61, Table 27:

Dividends on stocks.....	None.
Interest on bonds.....	\$285,541 00
Total.....	\$285,541 00

which has been included in the Profit and Loss account for the year, (Exhibit B.)

## OTHER PROPERTY.

(Annual Report 1892, page 63, Table 30.)

Steamships running between New York and New Orleans, viz.:

S. S. El Dorado -----	3,531 tons.	S. S. El Sud -----	4,659 tons.
S. S. El Monte -----	3,531 tons.	S. S. El Norte -----	4,659 tons.
S. S. El Paso -----	3,531 tons.	S. S. El Sol -----	4,522 tons.
S. S. El Mar -----	3,531 tons.	S. S. El Mar -----	3,531 tons.
S. S. Tug El Toro---	130 tons.		

These steamships are registered in New York.

Steamships and barges running on Sacramento River:

Steamer Herald -----	204 tons.	Steamer D. E. Knight,	
Steamer D. E. Knight---	217 tons.	No. 2 -----	248 tons.
Barge Acme -----	295 tons.	Barge Oroville -----	800 tons.
Barge Nicolaus -----	700 tons.	Barge Yuba City-----	700 tons.

The gross receipts and net income derived from the rental of the above steamships, and from the operation of the Sacramento River Steamer Line, are included in statement of Profit and Loss, Exhibit B.

One-half interest in cattle cars, on which about \$30,000 has been paid.

Real estate in San Francisco and Oakland, Cal.

## MEMO. TO EXHIBIT A.

The above does not include 16,426 shares (face value \$100.00 each) of the capital stock of the Wells-Fargo Express Company, on which dividends to the amount of \$193,608.00 were received during the year.

The stock was received as a bonus from said Express Company in consideration of a contract for express privileges for a period of 21 years from January 1, 1894, over the property and leased lines of the Southern Pacific Company.

This stock represents compensation for the use of these lines by the Express Company, and is therefore a part of their earnings, and hence has been held in trust for said proprietary lines; but has in part been distributed between December 31, 1896, and June 30, 1897 (see Annual Report June 30, 1897; G. H. & S. A. R'y, page 74, Table C; H. & T. C. R. R., page 80, Table C; A. & N. N. W. R. R., page 81, Table B; C. T. & N. W. R. R. Co., page 82, Table B, and F. W. & N. O. R'y, page 83, Table B); and the remainder is about to be distributed and will be distributed before the close of the business for the year ending June 30, 1898.

## EXHIBIT B.

## SOUTHERN PACIFIC COMPANY.

Statement of Profit and Loss Account, June 30, 1897.

(Annual Report 18 months ending June 30, 1897, page 61, Table 27.)

## RECEIPTS.

Gross earnings Marysville Steamboat Line-----	\$76,477 51
Rental for steamers -----	596,272 50
Rentals from property owned in San Francisco-----	223,362 07
Interest on bonds owned-----	285,541 00
Profit operating wood preserving works, Oakland-----	36,395 13
Net profit from operations under Omnibus Lease-----	163,530 43
Miscellaneous -----	23,425 92
Adjustment in inventory balances-----	218,580 91
Contribution to sinking fund for steamship mortgage----	75,000 00
Net profit operating Northern Cal. R'y, Table 5-----	20,512 68
Net profit operating Cal. Pacific R. R-----	45,625 05
	<hr/>
	\$1,764,723 20

## EXPENDITURES.

Operating expenses Marysville Steamboat Line-----	\$92,051 50
Taxes -----	30,601 56
Central Pacific R. R. Co. rental-----	15,000 00
Oregon & California R. R. Co., rental-----	7,500 00
Interest on steamship bonds-----	235,800 00
Interest on floating debt-----	167,389 08
Sinking fund requirement steamship mortgage-----	75,000 00
Deficit operating South Pacific Coast R'y, Table 5-----	184,646 51
Premium on steamship bonds redeemed-----	7,150 00
Readjustment in value of securities owned-----	11,659 82
Taxes assessed against Central Pacific R. R. for the years 1887-1888 -----	202,887 14
Deficit in operating Oregon & California R. R-----	1,277,272 30
	<hr/>
	\$2,306,957 91
Expenditures in excess of receipts-----	542,234 71

A copy, attest:

S. W. HAGER, Auditor.

REPORT  
OF THE  
SOUTHERN PACIFIC COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY.  
SEPTEMBER 15, 1898.

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ARTICLE III.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every Railway Company or Corporation, and every incorporated bank, trust company, guarantee or security company, gas company, water company, bridge company, ferry company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace car company, dining car company, sleeping car company, chair car company, and every other like company, corporation or association, and also every other corporation, company or association having or exercising any special or exclusive privilege or franchise, not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The place or places where such local taxes are to be paid, and how apportioned, where more than one jurisdiction is entitled to share of such tax, shall be determined by the Auditor, Treasurer and Secretary of State, who are hereby constituted a Board of Valuation and Assessment for said

purpose, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time as the business of the board may require.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, the corporations, companies and associations mentioned in the next preceding section, except banks and trust companies, whose statements shall be filed as hereinafter required by Section 16 of this article, shall annually, *between the fifteenth day of September and first day of October*, make and deliver to the Auditor of Public Accounts of this State, a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz:

Name of corporation: Southern Pacific Company.

Name the principal place of business of the corporation, company, or association you represent: San Francisco, Cal.

Give the name and official position of the officer making this report: Name J. B. Weaver; Position, Agent.

The kind of business in which the said corporation, company or association is engaged: The operating of associated lines.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date September 15, 1898: Preferred, none; Common, \$121,055,170.00.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or association, on September 15, 1898: Preferred, none; Common, 1,210,551.

Amount of capital stock, as above, paid up, \$121,055,170.00.

Par value of the preferred stock, as above: None.

Par value of the common stock, as above: \$100.00 per share.

Real value of the stock, as above. Preferred, none; Common, impossible to state.

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before September 15, 1898: \$23.75 per share.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company or association, on September 15, 1898: Surplus fund, none on hand; undivided profits, none on hand; value of all other assets, impossible to state. See Exhibit "A" in respect to assets and Exhibit "B" in respect to profits.

State the total amount of indebtedness, as principal, of the said corporation, company or association, on September 15, 1898:

Bonded indebtedness, \$2,501,000.00; Rate of interest paid, 6 per cent.

Other indebtedness, \$18,623,711.58; Amount of interest paid, \$387,771.37.

Total indebtedness, \$21,124,711.58 (excluding capital stock).

State separately the total amount of gross and net earnings, or income of the said corporation, company or association, including interest on investments, and income from all other sources for twelve months next before September 15, 1898.

Gross earnings or income. (See Exhibit

"B") . . . . . \$48,889,274.18

Less expenses,

Salaries . . . . .	\$*	
Wages . . . . .	\$*	
Interest . . . . .	\$387,771.37	
Dividends . . . . .	None	
Enlargement of plant . . . . .	\$*	
Other expenses . . . . .	\$*	
Total . . . . .		\$48,091,118.97

---

†Net income . . . . . \$798,155.21

Amount and kind of tangible property in this State owned by the said corporation, company or association, on September 15, 1898:

Amount of tangible property: Less than \$100.00.

Kind of tangible property: Office furniture.

State where the tangible property aforesaid is situated, assessed or liable to assessment: County, Jefferson; Town, Beechmont.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale: Less than \$100.00.

State the total length of the entire line or lines operated, owned, leased, or controlled in this State by the said corporation, company or association: None.

Specify in detail the entire length of the line or lines operated, owned, leased, or controlled, as above, in each county, city, town, and taxing district in this State. (Give the length of line in each county, town or taxing district separately.) None.

\*Impossible to state. See Exhibit "B."

†Provided the amounts advanced to some of the companies are repaid; if not, this will be largely reduced, if not entirely effaced.

### REMARKS.

All meetings of stockholders and directors are held in San Francisco, Cal.

All stocks, bonds, and other securities of the company are kept in either San Francisco or in the City of New York, where there is a financial office.

This Company has never had any property or carried on any business in the State of Kentucky.

The Company has never declared any dividend on its stock.

Also, the total length of the entire line or lines, as above, operated, owned, leased, or controlled, as above, elsewhere than in this State, 5,756.79.

State the entire net and gross income or earnings received by the said corporation, company, or association, in this State and out of this State, on business done in this State for twelve months next before September 15, 1898. Gross income, none; net income or earnings, none.

State the entire gross and net income or earnings received by the said corporation, company, or association, on business done in this State and elsewhere for the same length of time.

Gross income, \$48,889,274.18; net income or earnings, \$798,155.21. Subject to the within proviso at foot of second page of this report.

J. B. WEAVER,  
*Agent Southern Pacific Company.*

COMMONWEALTH OF KENTUCKY, }  
JEFFERSON COUNTY. } SS.

This day personally appeared before the undersigned, a Notary Public, in and for the State and county aforesaid, J. B. Weaver, Agent, Southern Pacific Company, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 1st day of October, 1898.

R. A. MEEK,  
*Notary Public, Jefferson County, Ky.*

My commission expires March 17, 1900.

I, S. W. Hager, Auditor of Public Accounts in and for the State of Kentucky, do hereby certify that the foregoing is a true and correct copy of the report filed in this office as of September 15, 1898, by the Southern Pacific Company, for the taxes of 1899.

Given under my hand this, the 27th day of August, 1907.

S. W. HAGER,  
*Auditor of Public Accounts,*  
State of Kentucky.

## EXHIBIT A.

## SOUTHERN PACIFIC COMPANY.

Statement of Capital Assets, September 15, 1898.

## STOCK.

(Face value \$100 per share.)

10,080 shares of stock of Austin & Northwestern R. R. Co.
2,000 shares of stock of Central Texas & Northwestern R. R. Co.
3,000 shares of stock of Fort Worth & New Orleans R'y Co.
*270,389 shares of stock of Galveston, Harrisburg & San Antonio R'y Co.
95,984 shares of stock of Houston & Texas Central R. R. Co.
*33,100 shares of stock of Louisiana Western R. R. Co.
*149,950 shares of stock of Morgan's Louisiana & Texas R. R. & S. S. Co.
6,150 shares of stock of New York, Texas & Mexican R'y Co.
*59,930 shares of stock of South Pacific Coast R'y Co.
*199,926 shares of stock of Southern Pacific R. R. Co. of Arizona.
*860,696 shares of stock of Southern Pacific R. R. Co. of California.
*68,863 shares of stock of Southern Pacific R. R. Co. of New Mexico.
*49,975 shares of stock of Texas & New Orleans R. R. Co. of 1874.
40,000 shares of stock of Oregon & California R. R. Co.
*41,721 shares of stock of Mexican International R. R. Co.
673 shares of miscellaneous stocks.
16,500 shares of stock of Wells, Fargo & Co. Express.

---

1,908,937 total shares.

\*Received in exchange for common stock of the Southern Pacific Company reported outstanding in the report to the Auditor of Public Accounts of Kentucky.

## BONDS.

\$2,224,000 face value Gulf, Western Texas & Pacific R. R. Co. First Mortgage. (These bonds are of little value, as the road does not pay its operating expenses. The deficit from operations for the year ending June 30, 1898, amounted to \$131,336.97.)

- 1,100,000 face value Galveston, Harrisburg & San Antonio R'y Co Second Mortgage 6 per cent Income Bonds. (No interest has ever been earned on these bonds, and they are of little value. Under an agreement with the holders of these bonds, the fixed charge for interest accruing thereon is waived, and interest is to be paid only out of the surplus earnings after payment of all prior charges. There have been no such surplus earnings.)
- 1,376,000 face value Southern Pacific R. R. Co. of California First Mortgage Consolidated 5 per cent bonds. (Market value about par.)
- 401,000 face value Oregon & California R. R. First Mortgage 5 per cent bonds. (Market value about 85 per cent of their face value.)
- 452,000 face value Houston & Texas Central R. R. Co. 5 per cent Debenture Bonds. (No market value, worth about 90 per cent of their face value.)
- 270,000 face value Gila Valley, Globe & Northern R'y Co. 5 per cent bonds. (No market value, worth perhaps about 90 per cent of face value.)
- 50,000 face value Sierra Railway Co. of California 6 per cent bonds. (Market value about par.)

There was received on account of the above stocks and bonds owned for the year ending June 30, 1898:

Dividend on stock of M. L. & T. R. R. & S. S. Co. paid from earnings of last 10 years (last dividend was de- clared in 1898)-----		\$1,500,000 00
Dividend on Wells, Fargo & Co. stock--		99,000 00
Interest on bonds-----		186,883 33
		<hr/>
		\$1,785,883 33

The above have been included in the Profit and Loss Account for the year. (See Exhibit B.)

#### OTHER PROPERTY.

Steamships running between New York and New Orleans, viz.:

S. S. El Mar -----	3,531 tons.	S. S. El Monte -----	3,531 tons.
S. S. El Dorado -----	3,531 tons.	S. S. El Paso -----	3,531 tons.

Steamships and barges running on Sacramento River:

Steamer Herald -----	204 tons.	Nicolaus -----	700 tons.
D. E. Knight -----	217 tons.	Knight, No. 2 -----	248 tons.
Acme -----	295 tons.	Oroville -----	800 tons.

The gross receipts and net income derived from the rental of the above steamships from the operation of the steamer line are included in statement of Profit and Loss, Exhibit B.

One-half interest in cattle cars, on which about \$30,000 has been paid.

Real estate in San Francisco and Oakland, Cal.

## EXHIBIT B.

Statement of Profit and Loss Account, September 15, 1898.

### RECEIPTS.

Gross transportation and other receipts of lines belonging to companies, the capital stock of which is principally owned by the Southern Pacific Company, and which are operated by the Southern Pacific Company under leases to it.....	\$27,382,463 19
Gross transportation and other receipts of lines belonging to companies whose capital stock is owned by others than the Southern Pacific Company, and which are operated by the Southern Pacific Company under leases to it.....	18,534,553 86
Gross receipts Marysville Steamboat Line.....	61,452 61
Rental from steamships.....	510,191 35
Rental from terminal facilities and other property....	150,332 51
Interest on bonds owned.....	186,883 33
Profit operating Wood Preserving Works.....	69,764 40
Dividend on Wells, Fargo & Co.'s stock owned.....	99,000 00
Contribution to sinking fund for steamship bonds.....	75,000 00
Rental prior to July 1, 1897, on real estate at Los Angeles .....	74,926 67
Profits on property sold.....	227,876 26
Dividend on capital stock of Morgan's Louisiana & Texas R. R. & S. S. Co.....	1,500,000 00
Miscellaneous receipts .....	16,830 00
Total .....	\$48,889,274 18

### EXPENDITURES.

Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies, the capital stock of which is principally owned by the Southern Pacific Company, and which are operated by the Southern Pacific Company under leases to it.....	\$26,948,982 43
---	-----------------

Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies whose capital stock is owned by others than the Southern Pacific Company, and which are operated by the Southern Pacific Company under leases to it-----		18,650,728 18
Expenses operating Marysville Steamboat Line-----	58,856 61	
Taxes -----	41,015 34	
Rental to Central Pacific R. R. Co-----	10,000 00	
Rental to Oregon & California R. R. Co-----	5,000 00	
Interest on steamship bonds-----	152,190 00	
Insurance on steamships-----	166,641 54	
Interest on open accounts-----	235,581 37	
Adjustment with proprietary companies for their share in Wells, Fargo contract-----	1,360,817 16	
Annual contribution for redemption of steamship bonds	75,000 00	
Loss in operating Oregon & California R. R-----	324,483 35	
Premium on steamship bonds purchased and canceled	3,550 00	
Uncollectible accounts charged off-----	36,444 00	
Loss on securities sold-----	1,575 00	
Miscellaneous expenses -----	20,253 99	
Total -----	\$48,091,118 97	
Receipts in excess of expenditures-----	798,155 21	

A copy, attest:

S. W. HAGER, Auditor.

REPORT  
OF THE  
SOUTHERN PACIFIC COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY.  
SEPTEMBER 15, 1899.

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ARTICLE III.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every Railway Company or Corporation, and every incorporated bank, trust company, guarantee or security company, gas company, water company, bridge company, ferry company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company telephone company, turnpike company, palace car company, dining car company, sleeping car company, chair car company, and every other like company, corporation or association, and also every other corporation, company or association having or exercising any special or exclusive privilege or franchise, not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The place or places where such local taxes are to be paid, and how apportioned, where more than one jurisdiction is entitled

to share of such tax, shall be determined by the Auditor, Treasurer and Secretary of State, who are hereby constituted a Board of Valuation and Assessment for said purpose, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time as the business of the board may require.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, the corporations, companies and associations mentioned in the next preceding section, except banks and trust companies, whose statements shall be filed as hereinafter required by Section 16 of this article, shall annually, *between the fifteenth day of September and first day of October*, make and deliver to the Auditor of Public Accounts of this State, a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz:

Name of corporation: Southern Pacific Company.

Name the principal place of business of the corporation, company, or association you represent: San Francisco, California.

Give the name and official position of the officer making this report: Name, J. B. Weaver; Position, Assistant Secretary.

The kind of business in which the said corporation, company, or association is engaged: The operating of associated lines.

The amount of capital stock, preferred and common, of the said corporation, company, or association, as of date September 15, 1899: Preferred, none; Common, \$126,608,114.00.

Number of shares, preferred and common, composing the capital stock of the said corporation, company, or

association, on September 15, 1899: Preferred, none; common, 1,266,081.14.

Amount of capital stock, as above, paid up, \$126,608,114.00.

Par value of the preferred stock, as above, none.

Par value of the common stock, as above, \$100.00 per share.

Real value of the stock as above. Preferred, none; common, impossible to say.

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before September 15, 1899.

\$44.00 per share.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company, or association, on September 15, 1899: Surplus fund, none on hand; undivided profits, none on hand; value of all other assets, impossible to state. See Exhibit "A" in respect to assets, and Exhibit "B" in respect to profits.

State the total amount of indebtedness, as principal, of the said corporation, company, or association, on September 15, 1899:

Bonded indebtedness, \$2,429,000.00; Rate of interest paid, 6 per cent.

Other indebtedness, \$19,422,754.62; Amount of interest paid, \$286,978.20.

Total indebtedness, \$21,851,754.62.

State separately the total amount of gross and net earnings, or income of the said corporation, company, or association, including interest on investments, and income from all other sources for twelve months next before September 15, 1899:

Gross earnings or income (See Exhibit B) .....	\$49,349,731.00
Less expenses,	
Salaries .....	\$*
Wages .....	\$*
Interest .....	\$286,978.20
Dividends .....	\$*
Enlargement of plant .....	\$*
Other expenses .....	\$*
Total .....	\$49,035,383.65
†Net income .....	\$314,347.35

Amount and kind of tangible property in this State owned by the said corporation, company, or association, on September 15, 1899.

Amount of tangible property: Less than \$100.00.

Kind of tangible property: Office furniture.

State where the tangible property aforesaid is situated, assessed or liable to assessment:

County, Jefferson; town, Beechmont.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale. Less than \$100.00.

State the total length of the entire line or lines operated, owned, leased, or controlled in this State by the said corporation, company, or association.

Specify in detail the entire length of the line or lines operated, owned, leased, or controlled as above, in each county, city, town, and taxing district in this State. (Give the length of line in each county, town, or taxing district separately.) None.

---

\*Impossible to state. See Exhibit "B."

†Provided the amounts advanced to some of the companies are repaid; if not, this will be largely reduced, if not entirely effaced.

## REMARKS.

All meetings of stockholders and directors are held in San Francisco, Cal.; all stocks, bonds, and other securities of the company are kept in either San Francisco or in the City of New York, where there is a financial office.

This Company has never had any property or carried on any business in the State of Kentucky.

The Company has never declared any dividend on its stock.

Also, the total length of the entire line or lines, as above, operated, owned, leased, or controlled, as above, elsewhere than in this State, 5,834.26 miles.

State the entire net and gross income or earnings received by the said corporation, company, or association, in this State and out of this State, on business done in this State for twelve months next before September 15, 1899. Gross income, none; net income or earnings, none.

State the entire gross and net income or earnings received by the corporation, company, or association, on business done in this State and elsewhere for the same length of time.

Gross income, \$49,349,731.00; net income or earnings, \$314,347.35. Subject to the written proviso on second page of this report.

J. B. WEAVER,

*Assistant Secretary.*

COMMONWEALTH OF KENTUCKY, }  
JEFFERSON COUNTY. } SS.

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, J. B. Weaver, whose signature is attached thereto, and made oath that the statements made in answer to the

above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 28th day of September, 1899.

R. A. MEEK,  
*Notary Public, Jefferson County, Ky.*

I, S. W. Hager, Auditor of Public Accounts in and for the State of Kentucky, do hereby certify that the foregoing is a true and correct copy of the report filed in this office as of September 15, 1899, by the Southern Pacific Company, for the taxes of 1900.

Given under my hand this the 27th day of August, 1907.

S. W. HAGER,  
*Auditor of Public Accounts,  
State of Kentucky.*

## EXHIBIT A.

### SOUTHERN PACIFIC COMPANY.

Statement of Capital Assets, September 15, 1899.

#### STOCK.

(Face value \$100 per share.)

- \*270,389 shares of stock of Galveston, Harrisburg & San Antonio R'y Co.
- 5,985 shares of stock of Houston & Texas Central R. R. Co.
- \*33,100 shares of stock of Louisiana Western R. R. Co.
- \*149,950 shares of stock of Morgan's Louisiana & Texas R. R. & S. S. Co.
- 6,150 shares of stock of New York, Texas & Mexican R'y Co.
- 59,930 shares of stock of South Pacific Coast R'y Co.
- \*199 shares of stock of Southern Pacific R. R. Co. of Arizona.
- \*909,643 shares of stock of Southern Pacific R. R. Co. of California.
- 35,760 shares of stock of Southern Pacific R. R. Co. of California.
- \*68,863 shares of stock of Southern Pacific R. R. Co. of New Mexico.
- \*49,975 shares of stock of Texas & New Orleans R. R. Co. of 1874.
- 189,350 shares of stock of Oregon & California R. R. Co.

\*41,641 shares of stock of Mexican International R. R. Co.  
 16,500 shares of stock of Wells, Fargo & Company's Express.  
 1,053 shares of miscellaneous.

2,038,215.

\*Received in exchange for common stock of the Southern Pacific Company reported outstanding in the report to the Auditor of Public Accounts of Kentucky.

#### BONDS.

\$2,224,000 face value Gulf, Western Texas & Pacific R'y Co. First Mortgage. (These bonds are of little value, as the road does not pay its working expenses. The deficit from operations for the year ending June 30, 1899, amounted to \$149,654.63.)

1,100,000 face value Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage. (No interest has ever been earned on these bonds, and they are of little value. Under an agreement with the holders of these bonds, the fixed charge for interest accruing thereon is waived, and interest is to be paid only out of the surplus earnings, after payment of all prior charges. The operations for the year ending June 30, 1899, resulted in a deficit of \$151,524.08.)

1,740,000 face value Southern Pacific R. R. Co. (of California) First Mortgage 5 per cent bonds. (Market value about 103½.)

367,000 face value Oregon & California R. R. Co. First Mortgage 5 per cent bonds. (Market value about par.)

41,000 face value Central Pacific R. R. Co. First Mortgage 6 per cent bonds. (Market value about 106.)

There was received on account of the above stocks and bonds owned for the year ending June 30, 1898:

Dividend on Wells, Fargo & Company	
stock .....	\$99,000 00
Interest on bonds.....	180,670 96
Total .....	\$279,670 96

The above have been included in the "Profit and Loss" account for the year. (See Exhibit B.)

#### OTHER PROPERTY.

Steamships running between New York and New Orleans, viz.:

S. S. El Dorado .....	3,531 tons.	S. S. El Monte .....	3,531 tons.
S. S. El Mar .....	3,531 tons.	S. S. El Paso .....	3,531 tons.

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## Steamships and barges running on Sacramento River:

Steamer Herald .....	204 tons.	Barge Nicolaus .....	700 tons.
Steamer D. E. Knight.....	217 tons.	Knight, No. 2.....	248 tons.
Barge Acme .....	295 tons.	Oroville .....	800 tons.

The gross receipts and net income derived from the rental of the above steamships from the operation of the steamer line are included in statement of Profit and Loss, Exhibit B.

One-half interest in cattle cars, on which about \$30,000 has been paid.

Nine cars used in wood preserving plant in Oregon.

Real estate in San Francisco and Oakland, Cal., and about 221,380 acres of land in Texas.

## EXHIBIT B.

Statement of Profit and Loss Account. September 15, 1899.

## RECEIPTS.

Gross transportation and other receipts of lines belonging to companies, the capital stock of which is principally owned by the Southern Pacific Company, and which are operated by the Southern Pacific Company under leases to it.....	\$30,831,645 53
Gross transportation and other receipts of lines belonging to companies whose capital stock is owned by others than the Southern Pacific Company, and which are operated by the Southern Pacific Company under leases to it.....	17,138,084 17
Gross receipts Marysville Steamboat Line.....	68,576 16
Rentals from steamships.....	329,870 40
Rentals from terminal properties.....	154,595 28
Rentals from other property.....	28,157 96
Dividends on Wells, Fargo & Co. stock owned.....	99,000 00
Interest on bonds owned.....	180,670 96
Sinking fund contributions for steamship bonds.....	71,400 00
Profits on bonds sold.....	348,175 45
Profits on stocks sold.....	41,000 00
Proceeds from sale or lease of lands.....	1,237 84
Miscellaneous .....	57,317 25
Total .....	\$49,349,731 00

## EXHIBIT B.

## EXPENDITURES.

Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies, the capital stock of which is principally owned by the Southern Pacific Company, and which are operated by the Southern Pacific Company under leases to it.....	\$30,730,478 66
Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies whose capital stock is owned by others than the Sotuhern Pacific Company, and which are operated by the Southern Pacific Company under leases to it.....	17,346,177 59
Marysville Steamboat Line, expenses operating.....	65,980 16
Taxes .....	20,376 47
Rental to Central Pacific R. R. Co.....	10,000 00
Rental to Oregon & California R. R. Co.....	5,000 00
Interest on steamship bonds.....	147,900 00
Insurance on steamships.....	76,000 00
Interest on open accounts.....	139,078 20
Annual contribution for redemption of steamship bonds	75,000 00
Loss in operating Oregon & California R. R.....	357,290 43
General expenses .....	7,617 18
Coal prospecting and other accounts charged off.....	54,484 96
Total .....	\$49,035,383 65
Receipts in excess of expenditures.....	314,347 35

A copy, attest:

S. W. HAGER, Auditor.

REPORT  
OF THE  
SOUTHERN PACIFIC COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY.  
SEPTEMBER 15, 1900.

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ARTICLE III.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every Railway Company or Corporation, and every incorporated bank, trust company, guarantee or security company, gas company, water company, bridge company, ferry company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace car company, dining car company, sleeping car company, chair car company, and every other like company, corporation or association, and also every other corporation, company or association having or exercising any special or exclusive privilege or franchise, not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The place or places where such local taxes are to be paid, and how apportioned, where more than one jurisdiction is entitled to share of such tax, shall be determined by the Auditor,

Treasurer and Secretary of State, who are hereby constituted a Board of Valuation and Assessment for said purpose, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time as the business of the board may require.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, the corporations, companies and associations mentioned in the next preceding section, except banks and trust companies, whose statements shall be filed as hereinafter required by Section 16 of this article, shall annually, *between the fifteenth day of September and first day of October*, make and deliver to the Auditor of Public Accounts of this State, a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz:

Name of corporation: Southern Pacific Company.

Name the principal place of business of the corporation, company, or association you represent: San Francisco, Cal.

Give the name and official position of the officer making this report: Name, Isaac E. Gates; Position, Secretary.

The kind of business in which the said corporation, company, or association is engaged: The operating of associated lines.

The amount of capital stock, preferred and common, of the said corporation, company, or association, as of date September 15, 1900: Preferred, none; common, \$197,832,148.00.

Number of shares, preferred and common, composing the capital stock of the said corporation, company, or association, on September 15, 1900: Preferred, none; common, 1,978,321.48.

Amount of capital stock, as above, paid up, \$197,-  
832,148.00.

Par value of the preferred stock, as above: None.

Par value of the common stock, as above: \$100.00  
per share.

Real value of the stock, as above. Preferred, none;  
common, impossible to state.

Highest price at which the stock above mentioned was  
sold at a *bona fide* sale within twelve months next before  
September 15, 1900: \$44¼ per share.

Amount of surplus fund and undivided profits, and  
the value of all other assets of the said corporation, com-  
pany, or association, on September 15, 1900: Surplus  
fund, none on hand; undivided profits, none on hand;  
value of all other assets, impossible to state. See Ex-  
hibit "A" in respect to assets and Exhibit "B" in re-  
spect to profits.

State the total amount of indebtedness, as principal,  
of the said corporation, company, or association, on Sep-  
tember 15, 1900:

Bonded indebtedness .....	\$31,176,500.00
Other indebtedness .....	25,432,461.89
Total indebtedness .....	56,608,961.89
Rate of interest paid, 6 and 4 per cent.	
Amount of interest paid on bonds.....	\$1,200,242.27
Amount of interest paid on loans.....	230,725.19
	<hr/>
	\$1,430,967.46

State separately the total amount of gross and net  
earnings, or income of the said corporation, company,  
or association, including interest on investments, and  
income from all other sources for twelve months next  
before September 15, 1900:

Gross earnings or income. (See Exhibit "B")	\$55,487,405.24
Less expenses,	
Salaries	\$
Wages	\$
Interest	\$ 1,430,967.46
Dividends	\$
Enlargement of plant	\$
Other expenses	\$
Total	\$56,081,591.28

Expenditures in excess of receipts..... \$594,186.04

Amount and kind of tangible property in this State owned by the said corporation, company, or association, on September 15, 1900:

Amount of tangible property: Less than \$100.00.

Kind of tangible property: Office furniture.

State where the tangible property aforesaid is situated, assessed or liable to assessment:

County, Jefferson. Town, Beechmont.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale. Less than \$100.00.

State the total length of the entire line or lines operated, owned, leased, or controlled in this State by the said corporation, company, or association.

Specify in detail the entire length of the line or lines operated, owned, leased, or controlled, as above, in each county, city, town, and taxing district in this State. (Give the length of line in each county, town, or taxing district separately.) None.

#### REMARKS.

All meetings of stockholders during the last year have been held in San Francisco, Cal., and in New York City, N. Y.

All stocks, bonds, and other securities of the company are kept in either San Francisco or in the City of New York, where there is a financial office.

This Company has never had any property (except office furniture as above), or carried on any business in the State of Kentucky.

The Company has not declared any dividend on its stock.

Also, the total length of the entire line or lines, as above, operated, owned, leased, or controlled, as above, elsewhere than in this State, 5,778.58.

State the entire net and gross income or earnings received by the said corporation, company, or association, in this State and out of this State, on business done in this State for twelve months next before September 15, 1900. Gross income, none; net income or earnings, none.

State the entire gross and net income or earnings received by the said corporation, company, or association, on business done in this State and elsewhere for the same length of time.

Gross income, \$55,487,405.24; net income or earnings, none.

Expenditures in excess of receipts. (See Exhibit "B.") \$594,186.04.

I. E. GATES,  
*Secretary.*

STATE OF NEW YORK, }  
CITY OF NEW YORK, NEW YORK COUNTY. } SS.

This day personally appeared before the undersigned, a Notary Public, in and for the State and county aforesaid, I. E. Gates, Secretary, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 24th day of September,  
1900.

RICHARD C. LORCH,  
*Notary Public, New York County.*

I, S. W. Hager, Auditor of Public Accounts in and for the State of Kentucky, do hereby certify that the foregoing is a true and correct copy of the report filed in this office as of September 15, 1900, by the Southern Pacific Company, for the taxes of 1901.

Given under my hand this, the 27th day of August, 1907.

S. W. HAGER,  
*Auditor of Public Accounts,*  
State of Kentucky.

## EXHIBIT A.

### SOUTHERN PACIFIC COMPANY.

Statement of Capital Assets, September 15, 1900.

#### STOCK.

(Face value \$100 per share.)

- \*672,742 shares common stock Central Pacific R'y Co.
- \*270,056 shares capital stock Galveston, Harrisburg & San Antonio R'y Co.
- \*33,100 shares capital stock Louisiana Western R. R. Co.
- \*41,641 shares capital stock Mexican International R. R. Co.
- \*49,940 shares capital stock Morgan's Louisiana & Texas R. R. & S. S. Co.
- 100,000 shares capital stock Morgan's Louisiana & Texas R. R. & S. S. Co.
- \*199,926 shares capital stock Southern Pacific R. R. Co. of Arizona.
- \*967,150 shares capital stock Southern Pacific R. R. Co. of California.
- 38,390 shares capital stock Southern Pacific R. R. Co. of California.
- \*68,863 shares capital stock Southern Pacific R. R. Co. of New Mexico.
- \*49,975 shares capital stock Texas & New Orleans R. R. of 1874.
- 10,080 shares capital stock Austin & Northwestern R. R. Co.
- 43,720 shares capital stock Carson & Colorado R'y Co.
- 2,000 shares capital stock Central Texas & Northwestern R'y Co.
- 670,446 shares common stock Central Pacific R. R. Co.
- 120,000 shares preferred stock Central Pacific R'y Co.
- 10,000 shares capital stock Cromwell Steamship Co.
- 3,000 shares capital stock Ft. Worth & New Orleans R'y Co.
- 1,990 shares capital stock Galveston, Houston & Northern R'y Co.
- 11,000 shares capital stock Gila Valley, Globe & Northern R'y Co.

19,073 shares capital stock Houston, East & West Texas R'y Co.
3,976 shares capital stock Houston & Shreveport R. R. Co.
95,985 shares capital stock Houston & Texas Central R. R. Co.
5,100 shares capital stock Maricopa & Phoenix & Salt River Valley R. R. Co.
6,150 shares capital stock New York, Texas & Mexican R'y Co.
69,500 shares common stock Oregon & California R. R. Co.
\$9,488.50 shares common stock Oregon & California R. R. Co. (scrip).
119,915 shares preferred stock Oregon & California R. R. Co.
\$200.00 shares preferred stock Oregon & California R. R. Co. (scrip).
49,294 shares capital stock San Antonio & Aransas Pass R'y Co.
59,930 shares capital stock South Pacific Coast R'y Co.
15,300 shares capital stock Wells, Fargo & Co.'s Express.
1,719.5 shares capital stock miscellaneous.

\*Received in exchange for common stock of the Southern Pacific Company reported outstanding in the report to the Auditor of Public Accounts of Kentucky.

#### BONDS.

\$2,224,000 face value Gulf, Western Texas & Pacific Co. First Mortgage. These bonds are of little value, as the road does not pay its working expenses. The deficit from operations for the year ending June 30, 1900, amounted to \$147,435.60.
1,100,000 face value Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage. (No interest has ever been earned on these bonds, and they are of little value.) Under an agreement with the holders of these bonds, the fixed charge for interest accruing thereon is waived, and interest is to be paid only out of the surplus earnings after payment of all prior charges. The operations of the company to June 30, 1900, have resulted in a large deficit.
414,000 face value Oregon & California R. R. Co. First Mortgage 5 per cent bonds. (Market value about par.)
1,762,000 face value Southern Pacific R. R. of California First Mortgage 5 per cent bonds. (Market value about 103.)
100,000 face value Riverside & Arlington R. R. Co. First Mortgage 4 per cent bonds. These bonds are not quoted, but are estimated to be worth about 80 per cent of their face value.
1,000 face value Central Pacific R. R. Co. First Mortgage 6 per cent bonds. (Market value about par.)

There was received on account of the above stocks and bonds owned for the year ending June 30, 1900:

Dividends on stocks -----	\$381,300.00
Interest on bonds -----	195,308.99
	<hr/>
	\$576,608.99

The above have been included in the "Profit and Loss" account for year. (See Exhibit B.)

## OTHER PROPERTY.

Steamships running between New York and New Orleans, viz.:

S. S. El Dorado .....	3,531 tons.	S. S. El Cid.....	4,572 tons.
S. S. El Mar .....	3,531 tons.	S. S. El Sud .....	4,572 tons.
S. S. El Monte .....	3,531 tons.	S. S. El Norte.....	4,572 tons.
S. S. El Paso .....	3,531 tons.	S. S. El Rio.....	4,572 tons.
Tug El Amigo.....	130 tons.		

The gross receipts and net income derived from the rental of the above steamships, and from the operation of the Steamer Line, are included in statement of Profit and Loss, Exhibit B.

One-half interest in cattle cars, on which about \$30,000 has been paid.

Nine cars used in wood preserving plant in Oregon.

Real estate in San Francisco and Oakland, Cal., and about 221,380 acres of land in Texas.

## EXHIBIT B.

Statement of Profit and Loss Account, September 15, 1900.

## RECEIPTS.

Gross transportation and other receipts of lines belonging to companies, the capital stock of which is principally owned by the Southern Pacific Company, and which are operated by the Southern Pacific Company under leases to it.....	\$52,460,788 82
Gross transportation and other receipts of lines belonging to companies whose capital stock is owned by others than the Southern Pacific Company, and which are operated by the Southern Pacific Company under leases to it.....	752,652 86
Rentals from steamships and earnings of steamship lines.....	912,002 41
Rentals from terminal properties.....	113,524 80
Rentals from other property.....	194,292 46
Dividends on stock owned.....	381,300 00
Interest on bonds owned.....	195,308 99
Profit on bonds sold.....	283,678 12
Profits on property sold.....	10,400 00
Proceeds from sale or lease of lands.....	4,459 45
Miscellaneous .....	85,935 66
Adjustments in old accounts.....	93,061 67
Total.....	\$55,487,405 24
Expenditures in excess of receipts.....	594,186 04

## EXPENDITURES.

Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies, the capital stock of which is principally owned by the Southern Pacific Company, and which are operated by the Southern Pacific Company under leases to it.....	\$51,895,294 78
Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies whose capital stock is owned by others than the Southern Pacific Company, and which are operated by the Southern Pacific Company under leases to it.....	929,337 07
Taxes .....	27,463 17
Rental to Central Pacific R. R. Co.....	10,000 00
Rental to Oregon & California R. R. Co.....	5,000 00
Interest on S. P. Co. 6 per cent steamship bonds.....	143,610 00
Interest on S. P. Co. 4 per cent bonds (C. P. stock collateral) .....	1,056,632 27
Insurance on steamships.....	155,506 01
Expenses operating steamship lines.....	343,868 85
Interest on open accounts.....	230,725 19
Loss in operating Oregon & California R. R.....	576,327 99
Advances to San Antonio & Aransas Pass R'y Co.....	632,012 25
Miscellaneous expenses .....	75,813 70
Total.....	\$56,081,591 28

A copy, attest:

S. W. HAGER, Auditor.

REPORT  
OF THE  
SOUTHERN PACIFIC COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY.  
SEPTEMBER 15, 1901.

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ARTICLE III.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every Railway Company or Corporation, and every incorporated bank, trust company guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace car company, dining car company, sleeping car company, chair car company, and every other like company, corporation

or association, and also every other corporation, company or association having or exercising any special or exclusive privilege or franchise, not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The place or places where such local taxes are to be paid, and how apportioned, where more than one jurisdiction is entitled to share of such tax, shall be determined by the Auditor, Treasurer and Secretary of State, who are hereby constituted a Board of Valuation and Assessment for said purpose, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time as the business of the board may require.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, the corporations, companies and associations mentioned in the next preceding section, except banks and trust companies, whose statements shall be filed as hereinafter required by Section 16 of this article, shall annually, *between the fifteenth day of September and first day of October*, make and deliver to the Auditor of Public Accounts of this State, a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz:

Name of corporation: Southern Pacific Company.

Name the principal place of business of the corporation, company or association you represent: New York City.

Give the name and official position of the officer making this report: Name, Alex Millar; Position, Secretary.

The kind of business in which the said corporation, company or association is engaged: The operating of associated lines.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date September 15, 1901: Preferred, none; common, \$197,847,788.40.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or association, on September 15, 1901: Preferred, none; common, 1,978,477.88.

Amount of capital stock, as above, paid up, \$197,847,788.40.

Par value of the preferred stock, as above, none.

Par value of the common stock, as above, \$100.00 per share.

Real value of the stock, as above. Preferred, none; common, impossible to state.

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before September 15, 1901: \$63<sup>5</sup>/<sub>8</sub> per share.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company or association, on September 15, 1901: Surplus fund, \$18,321.32; undivided profits, \$18,321.32; value of all other assets, impossible to state. See Exhibit "A" in respect to assets, and Exhibit "B" in respect to profits.

State the total amount of indebtedness, as principal, of the said corporation, company or association, on September 15, 1901:

Bonded indebtedness . . . . .	\$46,104,000 00
Other indebtedness . . . . .	21,643,207 74
Total indebtedness . . . . .	67,747,207 74

Rate of interest paid, 6, 4½ and 4 per cent.

Amount of interest paid on bonds . . . . .	\$1,629,809 99
Amount of interest paid on loans . . . . .	342,203 64

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\$1,972,013 63

State separately the total amount of gross and net earnings, or income of the said corporation, company or association, including interest on investments, and income from all other sources for twelve months next before September 15, 1901.

Gross earnings or income. See Exhibit B. . \$62,567,402 32  
Less expenses,

Salaries . . . . .	}	\$1,972,013 63
Wages. . . . .		
Interest . . . . .		
Dividends . . . . .		
Enlargement of plant. . . . .		
Other expenses . . . . .	}	
Total . . . . .		\$62,549,081 00

Net income . . . . . \$ 18,321 32

Amount and kind of tangible property in this State owned by the said corporation, company or association, on September 15, 1901:

Amount of tangible property, less than \$100.00.

Kind of tangible property, office furniture.

State where the tangible property aforesaid is situated, assessed or liable to assessment: County, Jefferson; town, Beechmont.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale. Less than \$100.00.

State the total length of the entire line or lines operated, owned, leased, or controlled in this State by the said corporation, company or association. None.

Specify in detail the entire length of the line or lines operated, owned, leased, or controlled, as above, in each county, city, town, and taxing district in this State. [Give the length of line in each county, town or taxing district separately.] None.

## REMARKS:

All meetings of stockholders during the year have been held in New York City, New York.

Meetings of Directors have been held in New York City, New York.

All stocks, bonds and other securities of the company are kept in either the city of New York or San Francisco, where there is a financial office.

This Company has never had any property (except office furniture) or carried on any business in the State of Kentucky.

The Company has never declared any dividend on its stock.

Also, the total length of the entire line or lines, as above, operated, owned, leased or controlled, as above, elsewhere than in this State: 6,243.10.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in this State for twelve months next before September 15, 1901. Gross income, none; net income or earnings, none.

State the entire gross and net income or earnings received by the said corporation, company or association, on business done in this State and elsewhere for the same length of time.

Gross income, \$62,567,402.32; net income or earnings, \$18,321.32.

ALEX MILLAR,  
*Secretary Southern Pacific Company.*

STATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Alex Millar, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 23d day of September, 1901.

J. B. MAXWELL,

*Notary Public No. 47,  
New York County.*

I, S. W. Hager, Auditor of Public Accounts in and for the State of Kentucky, do hereby certify that the foregoing is a true and correct copy of the report filed in this office as of September 15, 1901, by the Southern Pacific Company, for the taxes of 1902.

Given under my hand this, the 27th day of August, 1907.

S. W. HAGER,

*Auditor of Public Accounts, State of Kentucky.*

#### EXHIBIT A.

#### SOUTHERN PACIFIC COMPANY.

Statement of Capital Assets, September 15, 1901.

#### STOCK.

(Face Value \$100 per share.)

\*672,742 shares common stock Central Pacific R'y Co.

\*270,056 shares capital stock Galveston, Harrisburg & San Antonio R'y Co.

392 shares capital stock Galveston, Harrisburg & San Antonio R'y Co.

\*33,100 shares capital stock Louisiana Western R. R. Co.

\*41,641 shares capital stock Mexican International R. R. Co.

*49,940 shares capital stock	Morgan's Louisiana & Texas R. R. & S. S. Co.
100,000 shares capital stock	Morgan's Louisiana & Texas R. R. & S. S. Co.
*199,926 shares capital stock	Southern Pacific R. R. Co. of Arizona.
*967,265 shares capital stock	Southern Pacific R. R. Co. of California.
40,388 shares capital stock	Southern Pacific R. R. Co. of California.
*68,863 shares capital stock	Southern Pacific R. R. Co. of New Mexico.
*49,975 shares capital stock	Texas & New Orleans R. R. of 1874.
10,080 shares capital stock	Austin & Northwestern R. R. Co.
43,800 shares capital stock	Carson & Colorado R'y Co.
2,000 shares capital stock	Central Texas & Northwestern R'y Co
671,297 shares common stock	Central Pacific R. R. Co.
120,000 shares preferred stock	Central Pacific R'y Co.
10,000 shares capital stock	Cromwell Steamship Co.
3,000 shares capital stock	Ft. Worth & New Orleans R'y Co.
1,990 shares capital stock	Galveston, Houston & Northern R'y Co
11,000 shares capital stock	Gila Valley, Globe & Northern R'y Co
19,073 shares capital stock	Houston, East & West Texas R'y Co.
3,976 shares capital stock	Houston & Shreveport R. R. Co.
95,985 shares capital stock	Houston & Texas Central R. R. Co.
5,100 shares capital stock	Maricopa & Phoenix & Salt River Valley R. R. Co.
6,150 shares capital stock	New York, Texas & Mexican R'y Co.
69,594 shares common stock	Oregon & California R. R. Co.
119,917 shares preferred stock	Oregon & California R. R. Co.
100,100 shares capital stock	Pacific Mail Steamship Co.
49,294 shares capital stock	San Antonio & Aransas Pass R'y Co.
60,000 shares capital stock	South Pacific Coast R'y Co.
15,300 shares capital stock	Wells, Fargo & Co.'s Express.
66,349 shares capital stock	miscellaneous.

\*Received in exchange for common stock of the Southern Pacific Company reported outstanding in the report to the Auditor of Public Accounts of Kentucky.

#### BONDS.

\$890,000 face value	Texas & New Orleans R. R. Co. Dallas Division First Mortgage 4 per cent bonds. (Market value about par.)
800,000 face value	Galveston, Houston & Northern R'y Co. First Mortgage 5 per cent bonds. (Market value about par.)
2,000,000 face value	Carson & Colorado R'y Co. First Mortgage 4 per cent bonds. (These bonds are not quoted, but are estimated to be worth about 75 per cent of their face value.)

2,224,000 face value Gulf, Western Texas & Pacific R'y Co. First Mortgage bonds. (These bonds are of little value as the road does not pay its working expenses. The deficit from the operations for the year ending June 30, 1901, amounted to \$145,735.77.)

150,000 face value Houston & Shreveport R. R. Co. First Mortgage 6 per cent bonds. (Market value about 110.)

1,100,000 face value Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage bonds. (No interest has ever been earned on these bonds, and they are of little value. Under an agreement with the holders of these bonds the fixed charge for interest accruing thereon is waived, and interest is to be paid only out of the surplus earnings after the payment of all prior charges. The operations of the company to June 30, 1901, have resulted in a large deficit.)

188,000 face value Texas & New Orleans R. R. Co. First Mortgage 7 per cent bonds. (Market value about 114.)

685,000 face value Oregon & California R. R. Co. First Mortgage 5 per cent bonds. (Market value about 107.)

129,000 face value Southern Pacific R. R. Co. of California First Consolidated Mortgage 5 per cent bonds. (Market value about 108.)

95,000 face value Riverside & Arlington R. R. Co. First Mortgage 4 per cent bonds. (These bonds are not quoted, but are estimated to be worth about 80 per cent of their face value.)

12,000 face value Southern Pacific Co. 4 per cent bonds. (Market value about 92.)

There were received on account of the above stocks and bonds owned for the year ending June 30, 1901:

Dividends on stocks.....	\$173,706 50
Interest on bonds.....	368,980 00
Total .....	<u>\$542,686 50</u>

The above have been included in the "Profit and Loss" account for the year. See Exhibit B.

#### OTHER PROPERTY.

Steamships running between New York and New Orleans, viz.:

S. S. El Dorado.....	3,531 tons.	S. S. El Cid .....	4,572 tons.
S. S. El Mar.....	3,531 tons.	S. S. El Sud .....	4,572 tons.
S. S. El Monte .....	3,531 tons.	S. S. El Norte .....	4,572 tons.
S. S. El Paso .....	3,531 tons.	S. S. El Rio .....	4,572 tons.
S. S. El Valle .....	4,605 tons.	Tug El Amigo.....	130 tons.

The gross receipts and net income derived from the rental of the above steamships and from the operation of the steamer line are included in Statement of Profit and Loss, Exhibit B.

One-half interest in cattle cars, on which about \$30,000 has been paid.

Nine cars used in wood preserving plant in Oregon.

Real estate in San Francisco and Oakland, Cal., and about 218,190 acres of land in Texas.

## EXHIBIT B.

### Statement of Profit and Loss Account, September 15, 1901.

#### RECEIPTS.

Gross transportation and other receipts of lines belonging to companies the capital stock of which is principally owned by the Southern Pacific Co. and which are operated by the Southern Pacific Co. under leases to it.....	\$59,090,318 21
Gross transportation and other receipts of lines belonging to companies whose capital stock is owned by others than the Southern Pacific Co. and which are operated by the Southern Pacific Co. under leases to it.....	821,470 96
Rentals from steamships.....	738,752 86
Rentals from terminal properties.....	114,012 00
Rentals from other property.....	55,243 37
Dividends on stocks owned.....	173,706 50
Interest on bonds owned.....	368,980 00
Profits on bonds sold.....	15,537 69
Profits on stocks sold.....	111,732 05
Interest collected from U. S. of America on transportation accounts .....	966,799 52
Proceeds from sale or lease of lands.....	4,669 29
Miscellaneous .....	102,523 43
Adjustment of old accounts.....	3,656 44
Total receipts .....	\$62,567,402 32

## EXHIBIT B.

Statement of Profit and Loss Account, September 15, 1901.

## EXPENDITURES.

Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies the capital stock of which is principally owned by the Southern Pacific Co. and which are operated by the Southern Pacific Company under leases to it.....	\$58,295,103 39
Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies whose capital stock is owned by others than the Southern Pacific Co. and which are operated by the Southern Pacific Co. under leases to it.....	983,735 67
Taxes .....	49,644 50
Rental to Central Pacific R. R. Co.....	10,000 00
Rental to Oregon & California R. R. Co.....	5,000 00
Interest on S. P. Co. 6 per cent steamship bonds.....	139,320 00
Interest on S. P. 4 per cent bonds (C. P. stock collateral) .....	1,152,739 99
Interest on S. P. Co. 2-5 year 4½ per cent bonds.....	337,750 00
Insurance on steamships.....	182,750 00
Discount on bonds sold.....	165,000 00
Interest on open accounts.....	342,203 64
Loss in operating Oregon & California R. R.....	404,662 22
Advances to San Antonio & Aransas Pass R'y Co.....	465,609 29
Miscellaneous expenses .....	15,562 30
Total expenditures .....	\$62,549,081 00
Receipts in excess of expenditures.....	18,321 32
Total .....	\$62,567,402 32

A copy, attest:

S. W. HAGER, Auditor.

REPORT  
OF THE  
SOUTHERN PACIFIC COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY.  
SEPTEMBER 15, 1902.

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ARTICLE III.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every Railway Company or Corporation, and every incorporated bank, trust company, guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace car company, dining car company, sleeping car company, chair car company, and every other like company, corporation or association, and also every other corporation, company or association having or exercising any special or exclusive privilege or franchise, not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The place or places where such local taxes are to be paid, and how

apportioned, where more than one jurisdiction is entitled to share of such tax, shall be determined by the Auditor, Treasurer and Secretary of State, who are hereby constituted a Board of Valuation and Assessment for said purpose, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time as the business of the board may require.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, the corporations, companies and associations mentioned in the next preceding section, except banks and trust companies, whose statements shall be filed as hereinafter required by Section 16 of this article, shall annually, *between the fifteenth day of September and the first day of October*, make and deliver to the Auditor of Public Accounts of this State, a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz:

Name of corporation: Southern Pacific Company.

Name the principal place of business of the corporation, company or association you represent: New York City.

Give the name and official position of the officer making this report: Name, Alex Millar; Position, Secretary.

The kind of business in which the said corporation, company or association is engaged: The operating of associated lines.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date September 15, 1902: Preferred, none; common, \$197,849,227.40.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or

association, on September 15, 1902: Preferred, none; common, 1,978,492.27.

Amount of capital stock, as above, paid up, \$197,849,-227.40.

Par value of the preferred stock, as above, none.

Par value of the common stock, as above, \$100.00 per share.

Real value of the stock, as above: Preferred, none; Common, impossible to state.

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before September 15, 1902: \$81¼ per share.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company or association, on September 15, 1902: Surplus fund, none; undivided profits, none; value of all other assets, impossible to state. See Exhibit "A" in respect to assets.

State the total amount of indebtedness, as principal, of the said corporation, company or association, on September 15, 1902:

Bonded indebtedness .....	\$46,033,500 00
Other indebtedness .....	19,350,622 55
Total indebtedness .....	65,384,122 55

Rate of interest paid, 6, 4½ and 4 per cent.

Amount of interest paid on bonds .....	\$1,962,770 00
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Amount of interest paid on loans .....	283,456 34
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\$2,246,226 34

State separately the total amount of gross and net earnings, or income of the said corporation, company or association, including interest on investments, and income from all other sources for twelve months next before September 15, 1902.

Gross earnings or income .....\$62,978,874 76

Less expenses,

Salaries .....	}	\$2,246,226 34
Wages .....		
Interest .....		
Dividends .....		
Enlargement of plant....		
Other expenses .....		

Total.....\$64,334,971 39

Net deficit .....\$ 1,356,096 63

Amount and kind of tangible property in this State owned by the said corporation, company or association, on September 15, 1902:

Amount of tangible property: Less than \$100.00.

Kind of tangible property: Office furniture.

State where the tangible property aforesaid is situated, assessed or liable to assessment: County, Jefferson; town, Beechmont.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale. Less than \$100.00.

State the total length of the entire line or lines operated, owned, leased, or controlled in this State by the said corporation, company or association. None.

Specify in detail the entire length of the line or lines operated, owned, leased, or controlled, as above, in each county, city, town, and taxing district in this State. [Give the length of line in each county, town or taxing district separately.] None.

#### REMARKS:

All meetings of stockholders during the year have been held in New York City, New York.

Meetings of Directors have been held in New York City, New York.

All stocks, bonds and other securities of the company are kept in either the city of New York or San Francisco, where there is a financial office.

This Company has never had any property (except office furniture) or carried on any business in the State of Kentucky.

The Company has never declared any dividend on its stock.

Also, the total length of the entire line or lines, as above, operated, owned, leased or controlled, as above, elsewhere than in this State, 5,801.15.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in this State for twelve months next before September 15, 1902. Gross income, none; net income or earnings, none.

State the entire gross and net income or earnings received by the said corporation, company or association, on business done in this State and elsewhere for the same length of time.

Gross income, \$62,978,874.76; net income or earnings, none.

ALEX MILLAR. "

*Secretary Southern Pacific Company.*

STATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Alex Millar, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 23d day of September, 1902.

J. B. MAXWELL,

*Notary Public No. 47,  
New York County.*

I, S. W. Hager, Auditor of Public Accounts in and for the State of Kentucky, do hereby certify that the foregoing is a true and correct copy of the report filed in this office as of September 15, 1902, by the Southern Pacific Company, for the taxes of 1903.

Given under my hand this, the 27th day of August, 1907.

S. W. HAGER,  
*Auditor of Public Accounts, State of Kentucky.*

# EXHIBIT A.

## SOUTHERN PACIFIC COMPANY.

Statement of Capital Assets, September 15, 1902.

### STOCK.

(Face Value \$100 per share.)

- \*672,742 shares common stock Central Pacific R'y Co.
- \*270,056 shares capital stock Galveston, Harrisburg & San Antonio R'y Co.
- 488 shares capital stock Galveston, Harrisburg & San Antonio R'y Co.
- \*33,100 shares capital stock Louisiana Western R. R. Co.
- \*41,641 shares capital stock Mexican International R. R. Co.
- \*49,940 shares capital stock Morgan's Louisiana & Texas R. R. & S. S. Co.
- 100,000 shares capital stock Morgan's Louisiana & Texas R. R. & S. S. Co.
- \*199,926 shares capital stock Southern Pacific R. R. Co. of Arizona.
- \*967,300 shares capital stock Southern Pacific R. R. Co. of California.
- 40,388 shares capital stock Southern Pacific R. R. Co. of California.
- \*68,863 shares capital stock Southern Pacific R. R. Co. of New Mexico.
- \*49,975 shares capital stock Texas & New Orleans R. R. of 1874.
- 10,080 shares capital stock Austin & Northwestern R. R. Co.
- 43,800 shares capital stock Carson & Colorado R'y Co.
- 2,000 shares capital stock Central Texas & Northwestern R'y Co.
- 671,578 shares common stock Central Pacific R. R. Co.

\*Received in exchange for common stock of the Southern Pacific Company reported outstanding in the report to the Auditor of Public Accounts of Kentucky.

120,000	shares	preferred stock	Central Pacific R'y Co.
10,000	shares	capital stock	Cromwell Steamship Co.
3,000	shares	capital stock	Ft. Worth & New Orleans R'y Co.
1,989	shares	capital stock	Galveston, Houston & Northern R'y Co.
11,000	shares	capital stock	Gila Valley, Globe & Northern R'y Co.
19,070	shares	capital stock	Houston, East & West Texas R'y Co.
3,976	shares	capital stock	Houston & Shreveport R. R. Co.
95,984	shares	capital stock	Houston & Texas Central R. R. Co.
5,100	shares	capital stock	Maricopa & Phoenix & Salt River Valley R. R. Co.
6,150	shares	capital stock	New York, Texas & Mexican R'y Co.
69,719	shares	common stock	Oregon & California R. R. Co.
119,952	shares	preferred stock	Oregon & California R. R. Co.
100,100	shares	capital stock	Pacific Mail Steamship Co.
49,294	shares	capital stock	San Antonio & Aransas Pass R'y Co.
60,000	shares	capital stock	South Pacific Coast R'y Co.
9,997	shares	capital stock	Southern Pacific Terminal Co.
15,300	shares	capital stock	Wells, Fargo & Co.'s Express.
67,992	shares	capital stock	Miscellaneous.

## BONDS.

\$890,000	face value	Texas & New Orleans R. R. Co., Dallas Division, First Mortgage 4 per cent bonds. (Market value about par.)
800,000	face value	Galveston, Houston & Northern R'y Co. First Mortgage 5 per cent bonds. (Market value about par.)
2,000,000	face value	Carson & Colorado R'y Co. First Mortgage 4 per cent. (These bonds are not quoted, but are estimated to be worth about 75 per cent of their face value.)
2,224,000	face value	Gulf, Western Texas & Pacific R'y Co. First Mortgage bonds. (These bonds are of little value, as the road does not pay its working expenses. The deficit from the operations for the year ending June 30, 1902, amounted to \$150,081.36.)
150,000	face value	Houston & Shreveport R. R. Co. First Mortgage 6 per cent bonds. (Market value about 110.)
1,100,000	face value	Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage bonds. (No interest has ever been earned on these bonds, and they are of little value. Under an agreement with the holders of these bonds the fixed charge for interest accruing thereon is waived, and interest is to be paid only out of the surplus earnings after the payment of all prior charges. After the deduction of all charges, the operations of the company to June 30, 1902, have resulted in a deficit.)
37,000	face value	Texas & New Orleans R. R. Co. First Mortgage 7 per cent bonds. (Market value about 110.)

- 90,000 face value Oregon & California R. R. Co. First Mortgage 5 per cent bonds. (Market value about 104.)  
 95,000 face value Riverside & Arlington R. R. Co. First Mortgage 4 per cent bonds. (These bonds are not quoted, but are estimated to be worth about 80 per cent of their face value.)  
 13,000 face value Southern Pacific Co. 4 per cent bonds. (Market value about 94.)

There were received on account of (the above) stocks and bonds owned for the year ending June 30, 1902:

Dividends on stocks -----	\$201,596 00
Interest on bonds -----	323,992 72
Total-----	<u>\$525,588 72</u>

The above have been included in the "Profit and Loss" account for the year. See Exhibit B.

#### OTHER PROPERTY.

Steamships running between New York and New Orleans, viz.:

S. S. El Dorado -----	3,531 tons.	S. S. El Cid -----	4,572 tons.
S. S. El Mar -----	3,531 tons.	S. S. El Sud -----	4,572 tons.
S. S. El Monte -----	3,531 tons.	S. S. El Norte -----	4,572 tons.
S. S. El Paso -----	3,531 tons.	S. S. El Rio -----	4,572 tons.
S. S. El Valle -----	4,605 tons.	S. S. El Siglo -----	4,572 tons.
S. S. El Alba -----	4,605 tons.	S. S. El Dia -----	4,572 tons.
Tug El Amigo-----		130 tons.	

The gross receipts and net income derived from the rental of the above steamships and from the operation of the steamer line are included in Statement of Profit and Loss, Exhibit B.

One half interest in cattle cars, on which about \$30,000 has been paid.

Nine cars used in wood preserving plant in Oregon.

Real estate in San Francisco and Oakland, Cal., and about 217,550 acres of land in Texas.

## EXHIBIT B.

## Statement of Profit and Loss Account, September 15, 1902.

## RECEIPTS.

Gross transportation and other receipts of lines belonging to companies, the capital stock of which is principally owned by the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it.....	\$58,937,367 79
Gross transportation and other receipts of lines belonging to companies whose capital stock is owned by others than the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it .....	792,845 12
Earnings of and rentals from steamships.....	2,200,664 29
Rentals from terminal properties.....	121,512 00
Rentals from other property.....	42,845 51
Dividends on stocks owned.....	201,596 00
Interest on bonds owned.....	323,992 72
Interest on open accounts.....	56,923 05
Profits on bonds sold .....	44,752 50
Proceeds from sale or lease of lands.....	6,342 20
Miscellaneous .....	39,388 95
Dividends on capital stock of Central Texas & Northwestern Railway Co .....	200,000 00
Adjustment of old accounts.....	10,644 63
Total receipts .....	\$62,978,874 76
Expenditures in excess of receipts.....	1,356,096 63
Total .....	\$64,334,971 39

## EXHIBIT B.

Statement of Profit and Loss Account, September 15, 1902.

## EXPENDITURES.

Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies, the capital stock of which is principally owned by the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it -----	\$58,437,321 87
Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies whose capital stock is owned by others than the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it -----	1,061,447 58
Taxes -----	30,049 42
Rental to Central Pacific R. R. Co. -----	10,000 00
Rental to Oregon & California R. R. Co. -----	5,000 00
Rental to Southern Pacific R. R. Co. -----	5,000 00
Interest on S. P. Co. 6% steamship bonds -----	135,030 00
Interest on S. P. Co. 4% bonds (C. P. stock collateral) -----	1,152,740 00
Interest on S. P. Co. 2 5-year 4½% bonds -----	675,000 00
Steamship expenses -----	1,413,446 40
Insurance on steamships -----	259,520 90
Discount on bonds sold -----	165,000 00
Interest on open accounts -----	283,456 34
Loss in operating Oregon & California R. R. -----	207,029 43
Advances to San Antonio & Aransas Pass R'y Co. -----	396,300 30
Miscellaneous expenses -----	61,483 51
Adjustment of old accounts -----	37,145 64
Total -----	\$64,334,971 39

A copy, attest:

S. W. HAGER, Auditor.

REPORT  
OF THE  
SOUTHERN PACIFIC COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY.  
SEPTEMBER 15, 1903.

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ARTICLE III.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every Railway Company or Corporation, and every incorporated bank, trust company guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace car company, dining car company, sleeping car company, chair car company, and every other like company, corporation or association, and also every other corporation, company or association having or exercising any special or exclusive privilege or franchise, not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The place or places where such local taxes are to be paid, and how

apportioned, where more than one jurisdiction is entitled to share of such tax, shall be determined by the Auditor, Treasurer and Secretary of State, who are hereby constituted a Board of Valuation and Assessment for said purpose, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time as the business of the board may require.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, the corporations, companies and associations mentioned in the next preceding section, except banks and trust companies, whose statements shall be filed as hereinafter required by Section 16 of this article, shall annually, *between the fifteenth day of September and the first day of October*, make and deliver to the Auditor of Public Accounts of this State, a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz:

Name of corporation: Southern Pacific Company.

Name the principal place of business of the corporation, company or association you represent: New York City.

Give the name and official position of the officer making this report: Name, Alex Millar; Position, Secretary.

The kind of business in which the said corporation, company or association is engaged: The operating of associated lines.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date September 15, 1903: Preferred, none; common, \$197,849,258.64.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or

association, on September 15, 1903: Preferred, none; common, 1,978,492.58.

Amount of capital stock, as above, paid up, \$197,849,-258.64.

Par value of the preferred stock, as above, none.

Par value of the common stock, as above, \$100.00 per share.

Real value of the stock, as above. Preferred, none; common, impossible to state.

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before September 15, 1903: \$76½ per share.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company or association, on September 15, 1903: Surplus fund, none; undivided profits, none; value of all other assets, impossible to state. See Exhibit "A" in respect to assets.

State the total amount of indebtedness, as principal, of the said corporation, company or association, on September 15, 1903:

Bonded indebtedness . . . . .	\$51,562,500 00
Other indebtedness . . . . .	39,011,587 86
Total indebtedness . . . . .	90,574,087 86

Rate of interest paid, 6, 4½ and 4 per cent.

Amount of interest paid on bonds . . . . .	\$2,003,260 00
Amount of interest paid on loans . . . . .	791,246 33

---

\$2,794,506 33

State separately the total amount of gross and net earnings, or income of the said corporation, company or association, including interest on investments, and income from all other sources for twelve months next before September 15, 1903.

Gross earnings or income .....	\$65,470,828 87
Less expenses,	
Salaries .....	} \$2,794,506 33
Wages. ....	
Interest . . . . .	
Dividends . . . . .	
Enlargement of plant....	
Other expenses .....	} Total .....
	\$66,744,552 53
Net deficit .....	\$ 1,273,723 66

Amount and kind of tangible property in this State owned by the said corporation, company or association, on September 15, 1903:

Amount of tangible property, less than \$100.00.

Kind of tangible property, office furniture.

State where the tangible property aforesaid is situated, assessed or liable to assessment: County, Jefferson; town, Beechmont.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale. Less than \$100.00.

State the total length of the entire line or lines operated, owned, leased, or controlled in this State by the said corporation, company or association. None.

Specify in detail the entire length of the line or lines operated, owned, leased, or controlled, as above, in each county, city, town, and taxing district in this State. [Give the length of line in each county, town or taxing district separately.] None.

#### REMARKS:

All meetings of stockholders during the year have been held in Beechmont, Ky.

Meetings of Directors have been held in New York City, New York.

All stocks, bonds and other securities of the company are kept in either the city of New York or San Francisco, where there is a financial office.

The Company has never had any property (except office furniture) or carried on any business in the State of Kentucky.

The Company has never declared any dividend on its stock.

Also, the total length of the entire line or lines, as above, operated, owned, leased or controlled as above, elsewhere than in this State, 5,812.04.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in this State for twelve months next before September 15, 1903. Gross income, none; net income or earnings, none.

State the entire gross and net income or earnings received by the said corporation, company or association, on business done in this State and elsewhere for the same length of time.

Gross income, \$64,413,082.89; net income or earnings, none.

ALEX MILLAR,

*Secretary Southern Pacific Company.*

STATE OF NEW YORK,    }  
CITY OF NEW YORK,        }  
NEW YORK COUNTY.        } ss:

This day personally appeared before the undersigned, a Commissioner of Deeds for the Commonwealth of Kentucky, in and for the State and county aforesaid, Alex Millar, Secretary as named in the foregoing report, and whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand and official seal, this 21st day of September, A. D., 1903.

[SEAL.]

JOSEPH B. BRAMAN,

*Commissioner of Deeds for the Commonwealth of Kentucky, in and for the State of New York,*  
*resident in said City of New York.*

*120 and 1274 Broadway,  
New York City.*

I, S. W. Hager, Auditor of Public Accounts in and for the State of Kentucky, do hereby certify that the foregoing is a true and correct copy of the report filed in this office as of September 15, 1903, by the Southern Pacific Company, for the taxes of 1904.

Given under my hand this, the 27th day of August, 1907.

S. W. HAGER,

*Auditor of Public Accounts, State of Kentucky.*

#### EXHIBIT A.

#### SOUTHERN PACIFIC COMPANY.

Statement of Capital Assets, September 15, 1903.

#### STOCK.

(Face Value \$100 per share.)

\*672,742 shares common stock Central Pacific R'y Co.

\*270,056 shares capital stock Galveston, Harrisburg & San Antonio R'y Co.

488 shares capital stock Galveston, Harrisburg & San Antonio R'y Co.

\*33,100 shares capital stock Louisiana Western R. R. Co.

\*41,641 shares capital stock Mexican International R. R. Co.

\*49,940 shares capital stock Morgan's Louisiana & Texas R. R. and S. S. Co.

100,000 shares capital stock Morgan's Louisiana & Texas R. R. and S. S. Co.

\*199,926 shares capital stock Southern Pacific R. R. Co. of Arizona.

- \*967,401 shares capital stock Southern Pacific R. R. Co. of California
- 40,388 shares capital stock Southern Pacific R. R. Co. of California.
- \*68,863 shares capital stock Southern Pacific R. R. Co. of New Mexico.
- \*49,975 shares capital stock Texas & New Orleans R. R. of 1874.
- 10,080 shares capital stock Austin & Northwestern R. R. Co.
- 43,800 shares capital stock Carson & Colorado R'y Co.
- 2,000 shares capital stock Central Texas & Northwestern R'y Co
- 671,991 shares common stock Central Pacific R. R. Co.
- 126,000 shares preferred stock Central Pacific R'y Co.
- 10,000 shares capital stock Cromwell Steamship Co.
- 3,000 shares capital stock Ft. Worth & New Orleans R'y Co.
- 1,999 shares capital stock Galveston, Houston & Northern R'y Co.
- 11,000 shares capital stock Gila Valley, Globe & Northern R'y Co.
- 9,592 shares capital stock Houston, East & West Texas R'y Co.
- 3,976 shares capital stock Houston & Shreveport R. R. Co.
- 49,991 shares capital stock Houston & Texas Central R. R. Co.
- 10,000 shares capital stock Maricopa & Phoenix & Salt River Valley R. R. Co.
- 6,160 shares capital stock New York, Texas & Mexican R'y Co.
- 69,720 shares common stock Oregon & California R. R. Co.
- 119,952 shares preferred stock Oregon & California R. R. Co.
- 100,100 shares capital stock Pacific Mail Steamship Co.
- 60,000 shares capital stock South Pacific Coast R'y Co.
- 15,300 shares capital stock Wells, Fargo & Co.'s Express.
- 2,500 shares capital stock Sunset R. R. Co.
- 2,000 shares capital stock San Bernardino & Redlands R. R. Co.
- 508.7 shares capital stock Hearne & Brazos Valley R. R. Co.
- 25,000 shares capital stock Cananea, Yaqui River & Pacific R. R. Co.
- 9,997 shares capital stock Southern Pacific Terminal Co.
- 107 shares capital stock Ogden & Lucin R. R. Co.
- 4,686 shares capital stock Rio Bravo Oil Co.
- 47,156.37 shares capital stock Miscellaneous.

\*Received in exchange for common stock of the Southern Pacific Company reported outstanding in the report to the Auditor of Public Accounts of Kentucky.

#### BONDS.

- \$890,000 face value Texas & New Orleans R. R. Co., Dallas Division First Mortgage 4 per cent bonds. (Estimated value about 85.)
- 800,000 face value Galveston, Houston & Northern R'y Co. First Mortgage 5 per cent bonds. (Estimated value about 95.)
- 2,000,000 face value Carson & Colorado R'y Co. First Mortgage 4 per cent bonds. (Estimated value about 75.)

- 2,224,000 face value Gulf, Western Texas & Pacific R'y Co. First Mortgage bonds. (These bonds are of little value, as the road does not pay its working expenses. The deficit from the operations for the year ending June 30, 1903, amounted to \$173,726.12.)
- 150,000 face value Houston & Shreveport R. R. Co. First Mortgage 6 per cent bonds. (Market value about 110.)
- 1,100,000 face value Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage bonds. (No interest has ever been earned on these bonds, and they are of little value. Under an agreement with the holders of these bonds, the fixed charge of interest accruing thereon is waived, and interest is to be paid only out of the surplus earnings after the payment of all prior charges. After the deduction of all charges, the operations of the company to June 30, 1903, have resulted in a deficit.)
- 78,000 Maricopa & Phoenix R. R. Co. First Mortgage 5 per cent bonds.
- 539,000 Maricopa & Phoenix & Salt River Valley R. R. Co. First Mortgage 6 per cent bonds. (These bonds are of little value, as the earnings of the road about pay operating expenses and taxes.)
- 425,000 Houston & Texas R. R. Co. Lampasas Extension Interim 5 per cent bonds. (Estimated value about 90.)
- 142,000 Sunset R. R. Co. First Mortgage 4 per cent bonds. (Estimated value about 80.)
- 1,558,000 Galveston, Harrisburg & San Antonio R'y Co. 6 per cent Equipment bonds. (Estimated value about 90.)
- 1,292,000 Texas & New Orleans R. R. Co. 6 per cent Equipment bond (Estimated value about 90.)
- 112,500 Southern Pacific R. R. Co. First Mortgage 6 per cent bonds. (Market value about 108.)
- 78,000 face value Oregon & California R. R. Co. First Mortgage 5 per cent bonds. (Market value about 105.)
- 95,000 face value Riverside & Arlington R. R. Co. First Mortgage 4 per cent bonds. (Estimated value about 80.)
- 614,000 face value Southern Pacific Co. 4 per cent bonds. (Market value about 85.)

There were received on account of (the above) stocks and bonds owned the following sums for the year ending June 30, 1903:

Dividends on stocks.....	\$1,212,845 98
Interest on bonds.....	675,412 27
Total.....	<u>\$1,888,258 25</u>

The above sums are included in the "Profit and Loss" account for the year. See Exhibit B.

## OTHER PROPERTY.

Steamships running between New York, New Orleans, and  
Galveston, viz.:

S. S. El Dorado.....	3,531 tons.	S. S. El Cid .....	4,572 tons.
S. S. El Mar.....	3,531 tons.	S. S. El Sud .....	4,572 tons.
S. S. El Monte .....	3,531 tons.	S. S. El Norte .....	4,572 tons.
S. S. El Paso .....	3,531 tons.	S. S. El Rio .....	4,572 tons.
S. S. El Valle .....	4,605 tons.	S. S. El Siglo .....	4,572 tons.
S. S. El Alba .....	4,605 tons.	S. S. El Dia .....	4,572 tons.
S. S. Comus .....	4,828 tons.	S. S. Proteus .....	4,836 tons.
S. S. Louisiana .....	2,849 tons.	S. S. Knickerbocker ..	1,642 tons.
Tug El Amigo.....	130 tons.		

The gross receipts and net income derived from the operation of the above steamships are included in the Statement of Profit and Loss, Exhibit B.

Equipment as follows:

159 locomotives.

74 passenger cars.

7,068 freight and other cars.

Real estate in San Francisco and Oakland, Cal., and about 229,701 acres of land in the State of Texas.

WM. MAHL, Comptroller.

New York, N. Y., September 19, 1903.

A copy, attest:

S. W. HAGER, Auditor.

## EXHIBIT B.

## SOUTHERN PACIFIC COMPANY.

Statement of Profit and Loss Account, September 15, 1903.

## RECEIPTS.

Gross transportation and other receipts of lines belonging to companies, the capital stock of which is principally owned by the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it..... \$57,059,834 98

Gross transportation and other receipts of lines belonging to companies whose capital stock is owned by others than the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it ..... 720,302 27

Earnings of steamships.....	4,900,603 64
Rentals from terminal properties.....	121,512 00
Rentals from other property.....	70,346 90
Rentals from equipment.....	629,495 33
Dividends on stocks owned.....	1,212,845 98
Interest on bonds owned.....	675,412 27
Profits from stock sold.....	6,031 86
Profits on bonds sold.....	4,199 34
Proceedings from sale or lease of lands.....	6,550 35
Miscellaneous .....	63,693 95
Total receipts .....	\$65,470,828 87
Expenditures in excess of receipts.....	1,273,723 66
Total .....	\$66,744,552 53
New York, September 19, 1903.	

WM. MAHL, Comptroller.

## EXHIBIT B.

## SOUTHERN PACIFIC COMPANY.

Statement of Profit and Loss Account, September 15, 1903.

## EXPENDITURES.

Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies, the capital stock of which is principally owned by the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it .....	\$57,275,426 37
Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies whose capital stock is owned by others than the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it.....	892,278 44
Taxes .....	26,715 19
Rental to Central Pacific R'y Co.....	10,000 00
Rental to Oregon & California R. R. Co.....	5,000 00
Rental to Southern Pacific R. R. Co.....	10,000 00
Interest on S. P. Co. 6 per cent steamship bonds.....	130,770 00
Interest on S. P. Co. 4 per cent bonds (C. P. stock collateral) .....	1,178,740 00
Interest on S. P. Co. 2-5-year 4½ per cent bonds.....	693,750 00
Steamship expenses .....	3,862,552 89

Insurance on steamships .....	359,910 00
Discount on bonds sold.....	172,758 62
Interest on open accounts.....	226,217 63
Interest, discount, and exchange.....	565,028 70
Loss in operating Oregon & California R. R.....	308,278 35
Advances to San Antonio & Aransas Pass R'y Co.....	516,793 40
Expenses .....	330,368 20
Adjustment of old accounts.....	82,283 70
Surveys and accounts charged off.....	97,681 04
Total.....	<u>\$66,744,552 53</u>

New York, September 19, 1903.

WM. MAHL, Comptroller.

A copy, attest:

S. W. HAGER, *Auditor*.

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REPORT  
OF THE  
SOUTHERN PACIFIC COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY.  
SEPTEMBER 1, 1904.

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This report should be made as of September 1st, instead of September 15th, under provisions of an act of the last General Assembly changing the date of valuation of all taxable estate.

S. W. HAGER, *Auditor*.

## ARTICLE III.

## ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every Railway Company or Corporation, and every incorporated bank, trust company guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace car company, dining car company, sleeping car company, chair car company, and every other like company, corporation or association, and also every other corporation, company or association having or exercising any special or exclusive privilege or franchise, not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The place or places where such local taxes are to be paid, and how apportioned, where more than one jurisdiction is entitled to share of such tax, shall be determined by the Auditor, Treasurer and Secretary of State, who are hereby constituted a Board of Valuation and Assessment for said purpose, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time as the business of the board may require.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, the corporations, companies and associations mentioned in the next preceding section, except banks and trust companies, whose statements shall be filed as hereinafter required by Sec-

tion 16 of this article, shall annually, *between the fifteenth day of September and the first day of October*, make and deliver to the Auditor of Public Accounts of this State, a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz:

Name of corporation: Southern Pacific Company.

Name the principal place of business of the corporation, company or association you represent: New York City.

Give the name and official position of the officer making this report: Name, Jos. Hellen; Position, Assistant Secretary.

The kind of business in which the said corporation, company or association is engaged: The operating of associated lines.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date September 1, 1904: Preferred none; common, \$197,849,258.64.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or association, on September 1, 1904: Preferred, none; common, 1,978,492.58.

Amount of capital stock, as above, paid up, \$197,849,258.64.

Par value of the preferred stock, as above, none.

Par value of the common stock, as above, \$100.00 per share.

Real value of the stock, as above. Preferred, none; common, impossible to state.

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before September 1, 1904: \$59 per share.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, com-

pany or association, on September 1, 1904: Surplus fund, none; undivided profits, none; value of all other assets, impossible to state. See Exhibit "A" in respect to assets.

State the total amount of indebtedness, as principal, of the said corporation, company or association, on September 1, 1904:

Bonded indebtedness . . . . .	\$ 61,690,500 00
Other indebtedness . . . . .	\$ 59,669,743 98
Total indebtedness . . . . .	\$121,360,243 98
Rate of interest paid, 6, 4½ and 4 per cent.	
Amount of interest paid on bonds . . . . .	\$2,474,386 68
Amount of interest paid on loans . . . . .	1,744,482 03
	<hr/>
	\$4,218,868 71

State separately the total amount of gross and net earnings, or income of the said corporation, company or association, including interest on investments, and income from all other sources for twelve months next before September 1, 1904.

Gross earnings or income . . . . .	\$71,854,040 01
Less expenses,	
Salaries . . . . .	\$ . . . . .
Wages . . . . .	\$ . . . . .
Interest . . . . .	\$ . . . . .
Dividends . . . . .	\$3,870,368 71
Enlargement of plant . . . . .	\$ . . . . .
Other expenses . . . . .	\$ . . . . .
Total . . . . .	<hr/> \$73,089,589 89
Deficit . . . . .	\$1,235,549 88

Amount and kind of tangible property in this State owned by the said corporation, company, or association, on September 1, 1904.

Amount of tangible property, less than \$100.00.

Kind of tangible property, office furniture.

State where the tangible property aforesaid is situated, assessed or liable for assessment: County, Jefferson; town, Beechmont.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale. Less than \$100.00.

State the total length of the entire line or lines operated, owned, leased, or controlled in this State by the said corporation, company or association. None.

Specify in detail the entire length of the line or lines operated, owned, leased, or controlled, as above, in each county, city, town, and taxing district in this State. [Give the length of line in each county, town or taxing district separately.] None.

#### REMARKS:

All meetings of stockholders during the year have been held in Beechmont, Ky.

Meetings of Directors have been held in New York City, New York.

All stocks, bonds and other securities of the company are kept in either the city of New York or San Francisco, where there is a financial office.

The Company has never had any property (except office furniture) or carried on any business in the State of Kentucky.

The Company has never declared any dividend on its stock.

Also, the total length of the entire line or lines, as above, operated, owned, leased or controlled, as above, elsewhere than in this State, 5,836.44 miles.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in this State for twelve months next before September 1, 1904. Gross income, none; net income or earnings, none.

State the entire gross and net income or earnings received by the said corporation, company or association, on business done in this State and elsewhere for the same length of time.

Gross income, \$71,854,040.01; net income or earnings, none.

JOS. HELLEN,  
*Assistant Secretary*  
*Southern Pacific Company.*

STATE OF NEW YORK, }  
CITY OF NEW YORK, } ss:  
NEW YORK COUNTY. }

This day personally appeared before the undersigned, a Commissioner of Deeds for the State of Kentucky, and also a Notary Public in and for the State and County of New York, aforesaid, Jos. Hellen, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand and official seals this 22d day of September, 1904.

JOSEPH B. BRAMAN,  
*Commissioner of Deeds for Kentucky*  
*in New York.*

JOSEPH B. BRAMAN,  
*Notary Public, New York County,*  
*New York.*

*Offices: 120 and 1274 Broadway, New York City.*

I, S. W. Hager, Auditor of Public Accounts in and for the State of Kentucky, do hereby certify that the foregoing is a true and correct copy of the report filed in this office as of September 1, 1904, by the Southern Pacific Company, for the taxes of 1905.

Given under my hand this, the 27th day of August, 1907.

S. W. HAGER,  
*Auditor of Public Accounts, State of Kentucky.*

## EXHIBIT A.

## SOUTHERN PACIFIC COMPANY.

Statement of Capital Assets, September 15, 1904.

## STOCK.

(Face Value \$100 per share.)

*672,742	shares common stock	Central Pacific R'y Co.
*270,056	shares capital stock	Galveston, Harrisburg & San Antonio R'y Co.
483	shares capital stock	Galveston, Harrisburg & San Antonio R'y Co.
*33,100	shares capital stock	Louisiana Western R. R. Co.
500	shares capital stock	Louisiana Western R. R. Co.
*41,641	shares capital stock	Mexican International R. R. Co.
*49,940	shares capital stock	Morgan's Louisiana & Texas R. R. & S. S. Co.
100,060	shares capital stock	Morgan's Louisiana & Texas R. R. & S. S. Co.
*199,926	shares capital stock	Southern Pacific R. R. Co. of Arizona.
*967,401	shares capital stock	Southern Pacific R. R. Co. of California.
40,388	shares capital stock	Southern Pacific R. R. Co. of California.
*68,863	shares capital stock	Southern Pacific R. R. Co. of New Mexico.
*49,975	shares capital stock	Texas & New Orleans R. R. of 1874.
10,080	shares capital stock	Austin & Northwestern R. R. Co.
43,800	shares capital stock	Carson & Colorado R'y Co.
2,000	shares capital stock	Central Texas & Northwestern R'y Co.
672,001	shares common stock	Central Pacific R. R. Co.
128,000	shares preferred stock	Central Pacific R'y Co.
10,000	shares capital stock	Cromwell Steamship Co.
3,000	shares capital stock	Ft. Worth & New Orleans R'y Co.
1,999	shares capital stock	Galveston, Houston & Northern R'y Co.
11,000	shares capital stock	Gila Valley, Globe & Northern R'y.
19,184	shares capital stock	Houston, East & West Texas R'y Co.
3,976	shares capital stock	Houston & Shreveport R. R. Co.
99,982	shares capital stock	Houston & Texas Central R. R. Co.
10,000	shares capital stock	Maricopa & Phoenix & Salt River Valley R. R.
6,125	shares capital stock	New York, Texas & Mexican R'y Co.
69,720	shares common stock	Oregon & California R. R. Co.
119,952	shares preferred stock	Oregon & California R. R. Co.

\*Received in exchange for common stock of the Southern Pacific Company reported outstanding in the report to the Auditor of Public Accounts of Kentucky.

100,100 shares capital stock	Pacific Mail Steamship Co.
60,000 shares capital stock	South Pacific Coast R'y Co.
15,300 shares capital stock	Wells, Fargo & Co.'s Express.
2,500 shares capital stock	Sunset R. R. Co.
2,000 shares capital stock	San Bernardino & Redlands R. R. Co.
25,000 shares capital stock	Cananea, Yaqui River & Pacific R. R. Co.
19,997 shares capital stock	Southern Pacific Terminal Co.
107 shares capital stock	Ogden & Lucin R. R. Co.
4,686 shares capital stock	Rio Brava Oil Co.
59,264.07 shares of miscellaneous stock.	

## BONDS.

*\$1,254,000	face value Texas & New Orleans R. R. Co. Dallas Division First Mortgage 4 per cent bonds. (Market value about 95.)
800,000	face value Galveston, Houston & Northern R'y Co. First Mortgage 5 per cent bonds. (Estimated value about par.)
2,000,000	face value Carson & Colorado R'y Co. First Mortgage 4 per cent bonds. (Estimated value about 80.)
2,224,000	face value Gulf, Western Texas & Pacific R'y Co. First Mortgage bonds. (These bonds are of little value, as the road does not pay its working expenses. The deficit from the operations for the year ending June 30, 1904, amounted to \$244,178.56.)
150,000	face value Houston & Shreveport R. R. Co. First Mortgage 6 per cent bonds. (Market value about 110.)
1,100,000	face value Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage bonds. (No interest has ever been earned on these bonds, and they are of little value. Under an agreement with the holders of these bonds, the fixed charge of interest accruing thereon is waived, and interest is to be paid only out of the surplus earnings after the payment of all prior charges. After the deduction of all charges, the operations of the company to June 30, 1904, have resulted in a deficit.)
78,000	Maricopa & Phoenix & Salt River Valley R. R. Co. First Mortgage 5 per cent bonds.
539,000	Maricopa & Phoenix R. R. Co. First Mortgage 6 per cent bonds. (These bonds are of little value, as the earnings of the road about pay operating expenses and taxes.)
450,000	Houston & Texas R. R. Lampasas Extension First Mortgage 5 per cent bonds. (Estimated value about 90.)
842,000	New York, Texas & Mexican R'y Co., Matagorda Division. First Mortgage 6 per cent bonds. (Estimated value about 75.)

- \*770,000 Pacific Electric R'y Co. First Mortgage 5 per cent bonds.  
(Market value about par.)
- 142,000 Sunset R. R. Co. First Mortgage 4 per cent bonds. (Estimated value about 80.)
- 1,558,000 Galveston, Harrisburg & San Antonio R'y Co. 6 per cent Equipment bonds. (Estimated value about 90.)
- 1,292,000 Texas & New Orleans R. R. Co. 6 per cent Equipment bonds. (Estimated value about 90.)
- \*78,000 face value Oregon & California R. R. Co. First Mortgage 5 per cent bonds. (Market value about par.)
- 95,000 face value Riverside & Arlington R. R. Co. First Mortgage 4 per cent bonds. (Estimated value about 80.)
- \*848,000 face value Southern Pacific Co. 4 per cent bonds. (Market value about 94.)

Bonds marked thus \* are quoted in the New York market; all other bonds are without quotations.

There were received on account of (the above) stocks and bonds owned, the following sums for the year ending June 30, 1904:

Dividends on stocks.....	\$2,095,434 35
Interest on bonds.....	757,406 32
Total .....	\$2,852,840 67

The above sums are included in the "Profit and Loss" account for the year. See Exhibit B.

#### OTHER PROPERTY.

Steamships running between New York, New Orleans, and Galveston, viz.:

S. S. El Dorado.....	3,531 tons.	S. S. El Sud .....	4,572 tons.
S. S. El Mar.....	3,531 tons.	S. S. El Cid .....	4,572 tons.
S. S. El Monte .....	3,531 tons.	S. S. El Norte .....	4,572 tons.
S. S. El Paso .....	3,531 tons.	S. S. El Rio .....	4,572 tons.
S. S. El Valle .....	4,605 tons.	S. S. El Siglo .....	4,616 tons.
S. S. El Alba .....	4,614 tons.	S. S. El Dia .....	4,613 tons.
S. S. Comus .....	4,828 tons.	S. S. Proteus .....	4,836 tons.
S. S. Louisiana .....	2,849 tons.	Tug El Amigo.....	130 tons.

#### Two Barges.

The gross receipts and net income derived from the operation of the above steamships are included in the statement of Profit and Loss, Exhibit B.

## Equipment as follows:

239 Locomotives.

171 Passenger Cars.

6,854 Freight and other cars.

Real estate in San Francisco and Oakland, Cal.

WM. MAHL, Comptroller.

New York, September 19, 1904.

## EXHIBIT B.

## SOUTHERN PACIFIC COMPANY.

Statement of Profit and Loss Account, September 15, 1904.

## EXPENDITURES.

Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies, the capital stock of which is principally owned by the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it .....	\$60,328,581 71
Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies whose capital stock is owned by other than the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it.....	1,110,689 36
Taxes .....	45,738 42
Rentals other property and facilities.....	55,980 59
Rental to Central Pacific R'y Co.....	10,000 00
Rental to Oregon & California R. R. Co.....	5,000 00
Rental to Southern Pacific R. R. Co.....	10,000 00
Interest on S. P. Co. 6 per cent steamship bonds.....	126,480 00
Interest on S. P. Co. 4 per cent bonds (C. P. stock collateral) .....	1,185,406 68
Interest on S. P. Co. 2-5 year 4½ per cent bonds.....	1,162,500 00
Steamship expenses .....	4,278,549 35
Insurance on steamships.....	125,805 00
Interest on floating debt and open accounts.....	1,744,482 03
Loss in operating Oregon & California R. R.....	174,395 34
Advances for account of San Antonio & Aransas Pass R'y Co .....	1,872,481 59
Expenses .....	146,772 77
Difference between cost of S. S. "Knickerbocker" and proceeds realized from sale.....	105,588 37
Total .....	\$72,488,451 21

WM. MAHL, Comptroller.

September 19, 1904.

## RECEIPTS.

Gross transportation and other receipts of lines belonging to companies, the capital stock of which is principally owned by the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it.....	\$60,725,698 68
Gross transportation and other receipts of lines belonging to companies the capital stock of which is owned by others than the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it.....	843,013 60
Steamship receipts .....	5,349,908 61
Rentals from terminal properties.....	211,119 74
Rentals from other property.....	32,871 44
Rentals from equipment.....	1,190,930 17
Dividends on stocks owned.....	2,095,434 35
Interest on bonds owned.....	757,406 32
Net proceeds from sale or lease of lands.....	2,575 46
Miscellaneous .....	11,234 38
Adjustment of unsettled claims and accounts.....	32,708 58
<b>Total receipts .....</b>	<b>\$71,252,901 33</b>
<b>Expenditures in excess of receipts.....</b>	<b>1,235,549 88</b>
<b>Total .....</b>	<b>\$72,488,451 21</b>

New York, September 19, 1904.

WM. MAHL, Comptroller

A copy, attest:

S. W. HAGER, *Auditor.*

REPORT  
OF THE  
SOUTHERN PACIFIC COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY.  
SEPTEMBER 1, 1905.

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ARTICLE III.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every Railway Company or Corporation, and every incorporated bank, trust company guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace car company, dining car company, sleeping car company, chair car company, and every other like company, corporation or association, and also every other corporation, company or association having or exercising any special or exclusive privilege or franchise, not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The place or places where such local taxes are to be paid, and how

apportioned, where more than one jurisdiction is entitled to share of such tax, shall be determined by the Auditor, Treasurer and Secretary of State, who are hereby constituted a Board of Valuation and Assessment for said purpose, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time as the business of the board may require.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, the corporations, companies and associations mentioned in the next preceding section, except banks and trust companies, whose statements shall be filed as hereinafter required by Section 16 of this article, shall annually, *between the fifteenth day of September and the first day of October*, make and deliver to the Auditor of Public Accounts of this State, a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz:

Name of corporation: Southern Pacific Company.

Name the principal place of business of the corporation, company or association you represent: New York City.

Give the name and official position of the officer making this report: Name, Alex Millar; Position, Secretary.

The kind of business in which the said corporation, company or association is engaged: The operating of associated lines.

The amount of capital stock, preferred and common, of the said corporation, company or association, as of date September 1, 1905: Preferred, \$39,563,300.00; common, \$197,849,258.64.

Number of shares, preferred and common, composing the capital stock of the said corporation, company or

association, on September 1, 1905: Preferred, 395,633; common, 1,978,492.58.

Amount of capital stock, as above, paid up, \$237,412,-558.64.

Par value of the preferred stock, as above, \$100.00 per share.

Par value of the common stock, as above, \$100.00 per share.

Real value of the stock, as above. Preferred, impossible to state; common, impossible to state.

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before September 1, 1905. \$121.12 per share for preferred; \$72.37 per share for common.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company or association, on September 1, 1905: Surplus fund, none; undivided profits, none; value of all other assets, impossible to state. See Exhibit "A" in respect to assets.

State the total amount of indebtedness, as principal, of the said corporation, company or association, on September 1, 1905.

Bonded indebtedness . . . . .	\$ 40,598,500 00
Other indebtedness . . . . .	\$ 91,958,220 26
Total indebtedness . . . . .	\$132,556,720 26

Rate of interest paid, 6, 4½ and 4 per cent.

Amount of interest paid on bonds . . . . .	\$2,587,028 34
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Amount of interest paid on loans . . . . .	106,849 74
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\$2,693,878 08

State separately the total amount of gross and net earnings, or income of the said corporation, company or association, including interest on investments, and income from all other sources for twelve months next before September 1, 1905.

Gross earnings or income .....	\$78,094,933 04
Less expenses,	
Salaries .....	\$.....
Wages .....	\$.....
Interest .....	\$2,693,878 08
Dividends .....	\$2,769,431 00
Enlargement of plant .....	\$.....
Other expenses .....	\$.....
Total .....	\$75,882,238 83
Net Income .....	\$2,212,694 21

Amount and kind of tangible property in this State owned by the said corporation, company or association, on September 1, 1905.

Amount of tangible property, less than \$100.00.

Kind of tangible property, office furniture.

State where the tangible property aforesaid is situated, assessed or liable to assessment: County, Jefferson; town, Beechmont.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale. Less than \$100.00.

State the total length of the entire line or lines operated, owned, leased, or controlled in this State by the said corporation, company or association. None.

Specify in detail the entire length of the line or lines operated, owned, leased, or controlled, as above, in each county, city, town, and taxing district in this State. [Give the length of line in each county, town or taxing district separately.] None.

## REMARKS:

All meetings of stockholders during the year have been held in Beechmont, Ky.

Meetings of Directors have been held in New York City.

All stocks, bonds and other securities of the company are kept in either the city of New York or San Francisco, where there is a financial office.

The Company has never had any property (except office furniture) or carried on any business in the State of Kentucky.

A dividend of  $3\frac{1}{2}$  per cent, payable January 16, 1905, and of  $3\frac{1}{2}$  per cent, payable July 17, 1905, amounting in the aggregate to \$2,769,431.00, was declared by the Company on its outstanding preferred stock. No dividend has ever been declared on its common stock.

Also, the total length of the entire line or lines, as above, operated, owned, leased or controlled, as above, elsewhere than in this State, 5,950.12 miles.

State the entire net and gross income or earnings received by the said corporation, company or association, in this State and out of this State, on business done in this State for twelve months next before September 1, 1905. Gross income, none; net income or earnings, none.

State the entire gross and net income or earnings received by the said corporation, company or association, on business done in this State and elsewhere for the same length of time.

Gross income, \$78,094,933.04; net income or earnings, \$2,212,694.21, applied as noted on Exhibit "B."

ALEX MILLAR,

*Secretary Southern Pacific Company.*

STATE OF NEW YORK, }  
 NEW YORK COUNTY. } ss:

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Alex Millar, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 22d day of September, 1905.

J. B. MAXWELL,  
 [SEAL.] Notary Public, No. 50,  
 New York County.

My commission expires March 30, 1907.

I, S. W. Hager, Auditor of Public Accounts in and for the State of Kentucky, do hereby certify that the foregoing is a true and correct copy of the report filed in this office as of September 1, 1905, by the Southern Pacific Company, for the taxes of 1906.

Given under my hand this the 4th day of September, 1907.

S. W. HAGER,  
 Auditor of Public Accounts, State of Kentucky.

#### EXHIBIT A.

#### SOUTHERN PACIFIC COMPANY.

Statement of Capital Assets, September 1, 1905.

#### STOCK.

(Face Value \$100 per share.)

\*672,742 shares common stock Central Pacific R'y Co.

\*270,056 shares capital stock Galveston, Harrisburg & San Antonio R'y.

478 shares capital stock Galveston, Harrisburg & San Antonio R'y.

- \*33,100 shares capital stock Louisiana Western R. R. Co.
- 500 shares capital stock Louisiana Western R. R. Co.
- \*41,641 shares capital stock Mexican International R. R. Co.
- \*49,940 shares capital stock Morgan's Louisiana & Texas R. R. & S. S. Co.
- 100,060 shares capital stock Morgan's Louisiana & Texas R. R. & S. S. Co.
- \*1,236,190 shares capital stock Southern Pacific R. R. Co.
- 40,496 shares capital stock Southern Pacific R. R. Co.
- \*49,975 shares capital stock Texas & New Orleans R. R. of 1874
- 10,080 shares capital stock Austin & Northwestern R. R. Co.
- 43,800 shares capital stock Carson & Colorado R'y Co.
- 2,000 shares capital stock Central Texas & Northwestern R'y Co.
- 672,066 shares common stock Central Pacific R. R. Co.
- 130,000 shares preferred stock Central Pacific R'y Co.
- 10,000 shares capital stock Cromwell Steamship Co.
- 3,000 shares capital stock Ft. Worth & New Orleans R'y Co.
- 1,999 shares capital stock Galveston, Houston & Northern R'y Co.
- 20,000 shares capital stock Gila Valley, Globe & Northern R'y Co.
- 19,184 shares capital stock Houston, East & West Texas R'y Co.
- 3,976 shares capital stock Houston & Shreveport R. R. Co.
- 99,983 shares capital stock Houston & Texas Central R. R. Co.
- 10,000 shares capital stock Maricopa & Phoenix & Salt River Valley R. R.
- 6,125 shares capital stock New York, Texas & Mexican R'y Co.
- 69,701 shares common stock Oregon & California R. R. Co.
- 119,910 shares preferred stock Oregon & California R. R. Co.
- 100,100 shares capital stock Pacific Mail Steamship Co.
- 60,000 shares capital stock South Pacific Coast R'y Co.
- 15,300 shares capital stock Wells, Fargo & Co.'s Express.
- 2,500 shares capital stock Sunset R. R. Co.
- 2,000 shares capital stock San Bernardino & Redlands R. R. Co.
- 25,000 shares capital stock Cananea, Yaqui River & Pacific R. R. Co.
- 19,997 shares capital stock Southern Pacific Terminal Co.
- 675 shares common stock Southern Pacific Co.
- 747 shares preferred stock Southern Pacific Co.
- 5,000 shares capital stock Eureka & Klamath River R. R. Co.
- 8,495 shares capital stock Rio Bravo Oil Co.
- 60,314.15 shares capital stock Miscellaneous.

\*Received in exchange for common stock of the Southern Pacific Company reported outstanding in the report to the Auditor of Public Accounts of Kentucky.

## BONDS.

(Face Value.)

- \*\$1,190,000 Texas & New Orleans R. R. Co., Dallas Division, First Mortgage 4 per cent bonds. (Market value about 94.)
- 800,000 Galveston, Houston & Northern R'y Co. First Mortgage 5 per cent bonds. (Estimated value about par.)
- 2,000,000 Carson & Colorado R'y Co. First Mortgage 4 per cent bonds. (Estimated value about 90.)
- 2,224,000 Gulf, Western Texas & Pacific R'y Co. First Mortgage bonds. (These bonds are of little value, as the road does not pay its working expenses. The deficit from the operations for the year ending June 30, 1905, amounted to \$234,634.94.)
- 150,000 Houston & Shreveport R. R. Co. First Mortgage 6 per cent bonds. (Market value about 110.)
- 1,100,000 Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage bonds. (No interest has ever been earned on these bonds, and they are of little value. Under an agreement with the holders of these bonds, the fixed charge of interest accruing thereon is waived, and interest is to be paid only out of the surplus earnings after the payment of all prior charges. After the deduction of all charges the operations of the company to June 30, 1905, have resulted in a deficit of \$589,811.76.)
- 78,000 Maricopa & Phoenix & Salt River Valley R. R. Co. First Mortgage 5 per cent bonds.
- 539,000 Maricopa & Phoenix R. R. Co. First Mortgage 6 per cent bonds. (These bonds are of little value, as the earnings of the road usually about pay operating expenses and taxes. After deducting operating expenses and taxes from the earnings for the year ending June 30, 1905, there was a deficiency of \$28,775.04.)
- 425,000 Houston & Texas Central R. R. Co. Lampasas Branch Extension First Mortgage 5 per cent bonds. (Estimated value about 90.)
- 548,000 New York, Texas & Mexican R'y Co. Matagorda Division First Mortgage 6 per cent bonds. (Estimated value about 75.)
- 142,000 Sunset R. R. Co. First Mortgage 4 per cent bonds. (Estimated value about 80.)
- 1,558,000 Galveston, Harrisburg & San Antonio R'y Co. 6 per cent Equipment bonds. (Estimated value about 90.)
- 1,292,000 Texas & New Orleans R. R. Co. 6 per cent Equipment bonds. (Estimated value about 90.)

- \*32,000 Oregon & California R. R. Co. First Mortgage 5 per cent bonds. (Market value about 103.)
- 95,000 Riverside & Arlington R. R. Co. First Mortgage 4 per cent bonds. (Estimated value about 80.)
- \*1,049,000 Southern Pacific Co. 4 per cent bonds. (Market value about 96.)
- 926,000 Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage, Eastern Division, 7 per cent bonds. (Estimated value par.)
- 555,000 Texas & New Orleans R. R. Co. First Mortgage Main Line 7 per cent bonds. (Estimated value par.)
- 3,000 California Callexico School District 6 per cent bonds. (Estimated value par.)
- 3,000 California Silsbee School District 6 per cent bonds. Estimated value par.)

NOTE.—Bonds marked thus \* are quoted in the New York market. All other bonds are without quotations.

There were received on account of the hereinbefore mentioned stocks and bonds owned, the following sums for the year ending June 30, 1905:

Dividends on stocks .....	\$7,243,239 43
Interest on bonds.....	634,100 84
Total .....	\$7,877,340 27

The above sums are included in the "Profit and Loss" account for the year. See Exhibit B.

#### OTHER PROPERTY.

Steamships running between New York, New Orleans, and Galveston, viz.:

S. S. El Dorado.....	3,531 tons.	S. S. El Cid .....	4,608 tons.
S. S. El Mar.....	3,531 tons.	S. S. El Sud .....	4,572 tons.
S. S. El Monte .....	3,531 tons.	S. S. El Norte .....	4,604 tons.
S. S. El Paso .....	3,531 tons.	S. S. El Rio .....	4,604 tons.
S. S. El Valle .....	4,605 tons.	S. S. El Siglo .....	4,616 tons.
S. S. El Alba .....	4,614 tons.	S. S. El Dia .....	4,613 tons.
S. S. Comus .....	4,828 tons.	S. S. Proteus .....	4,836 tons.

Tug El Amigo, 150 tons.  
Two Barges.

The gross receipts and net income derived from the operation of the above steamships are included in the Statement of Profit and Loss, Exhibit B

Equipment as follows:

323 Locomotives.  
152 Passenger Cars.  
7,843 Freight and other cars.

Real estate in San Francisco and Oakland, Cal.

WM. MAHL.

New York, September 15, 1905.

## EXHIBIT B.

Statement of Profit and Loss Account, September 1, 1905.

### RECEIPTS.

Gross transportation and other receipts of lines belonging to companies, the capital stock of which is principally owned by the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it.....	\$61,487,101 54
Gross transportation and other receipts of lines belonging to companies the capital stock of which is owned by others than the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it.....	819,068 73
Steamship receipts .....	5,351,834 58
Rentals from terminal properties.....	231,023 62
Rentals from other property.....	123,636 98
Rentals from equipment.....	1,410,884 91
Dividends on stocks owned.....	7,243,239 43
Interest on bonds owned.....	634,100 84
Interest on loans and on open accounts.....	313,706 40
Net proceeds from sale or lease of lands.....	3,364 63
Profits on bonds sold.....	415,000 00
Miscellaneous .....	61,971 38
Total .....	\$78,094,933 04

WM. MAHL.

New York, September 15, 1905.

## EXHIBIT B.

Statement of Profit and Loss Account, September 1, 1905.

## EXPENDITURES.

Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies, the capital stock of which is principally owned by the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it -----	\$61,317,173 82
Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies, the capital stock of which is owned by others than the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it -----	1,149,646 75
Taxes -----	136,591 52
Rentals other property and facilities -----	18,914 78
Rental to Central Pacific R'y Co. -----	10,000 00
Rental to Oregon & California R. R. Co. -----	5,000 00
Rental to Southern Pacific R. R. Co. -----	10,000 00
Interest on S. P. Co. 6 per cent steamship bonds -----	122,190 00
Interest on S. P. Co. 4 per cent bonds (C. P. stock collateral) -----	1,193,496 66
Interest on S. P. Co. 2-5 years 4½ per cent bonds -----	1,245,038 34
Interest on S. P. Co. 2-5 years 4 per cent bonds -----	26,303 34
Steamship expenses -----	4,572,895 91
Interest on open accounts -----	106,849 74
Loss in operating Oregon & California R. R. -----	1,174,970 91
Interest charged on advances to San Antonio & Aransas Pass R'y Co. charged off -----	370,761 73
Advanced to S. A. & A. P. R'y Co. for the purchase of bonds ordered canceled by the Railroad Commission of the State of Texas -----	1,271,845 50
Discount on bonds sold -----	139,820 00
Expenses -----	154,229 89
Difference between cost of S. S. "Louisiana" lost and credits for depreciation and insurance collected -----	61,231 82
Adjustment of unsettled claims and accounts -----	25,847 12
Dividends on preferred stock, January 16, 1905 -----	1,384,715 50
Dividends on preferred stock payable July 17, 1905 -----	1,384,715 50
Total disbursements -----	\$75,882,238 83
Receipts in excess of disbursements -----	*2,212,694 21
Total -----	\$78,094,933 04

\*This amount has been advanced to companies in which the Southern Pacific Co. is interested through the ownership of stock therein for betterments and additions and to make up deficiencies in their earnings.

WM. MAHL, Comptroller.

New York, September 15, 1905.

A copy, attest:

S. W. HAGER, Auditor.

REPORT  
OF THE  
SOUTHERN PACIFIC COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY.  
JUNE 30, 1906.

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ARTICLE IV, SUBDIVISION 1.

ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every railway company or corporation, and guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace-car company, dining-car company, sleeping-car company, chair-car company, and every other like company, corporation or association, also every other corporation, company, or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town or taxing district, where its franchise may be exercised. The Auditor, Treasurer, and Secretary of State are hereby constituted a Board of Valuation and Assessment for fixing the value of said franchise, except as to turnpike companies, which are provided for in Section 1 of

Subdivision 4 of this article, the place or places where such local taxes are to be paid by other corporations on their franchise, and how apportioned, where more than one jurisdiction is entitled to a share of such tax, shall be determined by the Board of Valuation and Assessment, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be Chairman of said board, and shall convene the same from time to time, as the business of the board may require. It shall be the duty of the Attorney-general, when requested by the Board of Valuation and Assessment, to attend said board at its meetings and advise with same in its proceedings.

§ 2. In order to determine the value of the franchise mentioned in the next preceding section shall annually, between the thirtieth day of June and the first day of October, make and deliver to the Auditor of Public Accounts of this State a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz.:

Name of corporation: Southern Pacific Company.

Name of the principal place of business of the corporation, company, or association you represent: New York City.

Give the name and official position of the officer making this report.

Name: Alex Millar. Position: Secretary.

The kind of business in which the said corporation, company or association is engaged: The operating of Associated Lines.

The amount of capital stock, preferred and common, of the said corporation, company, or association, as of date June 30, 1906: Preferred, \$39,569,700.00; Common, \$197,849,258.64.

Number of shares, preferred and common, composing the capital stock of the said corporation, company, or

association on June 30, 1906: Preferred, 395,697; Common, 1,978,492.5864.

Amount of capital stock as above, paid up: \$237,415.958.64.

Par value of the preferred stock, as above: \$100 per share.

Par value of the common stock, as above: \$100 per share.

Real value of the stock as above: Preferred, impossible to state; Common, impossible to state.

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before June 30, 1906: \$122.25 per share, preferred; \$72.87 per share for common.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company, or association, on June 30, 1906: Surplus fund, see Exhibit "B"; undivided profits, see Exhibit "B."

Value of all other assets: Impossible to state, see Exhibit "A" in respect of assets.

State the total amount of indebtedness, as principal, of the said corporation, company, or association, on June 30, 1906.

Bonded indebtedness, \$39,209,500.00; Rate of interest paid, 6 and 4%.

Other indebtedness, \$76,981,039.98; Amount of interest paid on bonds, \$1,607,300.00.

Amount of interest paid on loans, \$798,534.70.

Total indebtedness, \$116,190,539.98.

Total interest paid, \$2,405,834.70.

State separately the total amount of gross and net earnings, or income of the said corporation, company or association, including interest on investments, and income from all other sources for twelve months next before June 30, 1906.

Gross earnings or income.....	\$87,955,595.97
Less expenses,	
Salaries .....	\$ .....
Wages .....	\$ .....
Interest .....	\$2,405,834.70
Dividends .....	\$7,716,110.46
Enlargement of plant.....	\$ .....
Other expenses .....	\$ .....
Total.....	<u>\$87,171,554.24</u>
Net income .....	\$ 784,041.73

Amount and kind of tangible property in this State owned by the said corporation, company or association, on September 1, 1906.

Amount of tangible property: Less than \$100.

Kind of tangible property: Office furniture.

State where the tangible property aforesaid is situated, assessed or liable to assessment.

County, Jefferson; City.....

Town, Beechmont; number or name of taxing district or precinct .....

State the fair cash value of said tangible property at the price it would bring at a fair voluntary sale.

Less than \$100.00.

Specify in detail the entire length of line or lines operated, owned, leased, or controlled in each county, city, town, and taxing district in this State. (Give the length of line in each county, town, or taxing district separately.)  
None.

#### REMARKS:

All meetings of stockholders during the year have been held in Beechmont, Kentucky.

All meetings of Directors have been held in New York City.

All stocks, bonds, and other securities of the company are kept in either the city of New York or San Francisco, where there is a financial office.

The company has never had any property, except office furniture, or carried on any business in the State of Kentucky.

A dividend of  $3\frac{1}{2}$  per cent, payable January 15, 1906, and of  $3\frac{1}{2}$  per cent, payable July 2, 1906, amounting in the aggregate to \$2,769,879.00, was declared by the company on the outstanding preferred stock.

A dividend of  $2\frac{1}{2}$  per cent, payable October 1, 1906, amounting to \$4,946,231.46, was declared by the company on the outstanding common stock.

State the total mileage operated, owned, leased, or controlled in this State: None.

Also the total length of the entire line or lines, as above, operated, owned, leased or controlled, as above, elsewhere than in this State: 5.981.42.

State the entire net and gross income or earnings received by the said corporation, company, or association, in this State and out of this State, on business done in this State for twelve months next before June 30, 1906. Gross income, none; Net income or earnings, none.

State the entire gross and net income or earnings received by the said corporation, company, or association, on business done in this State elsewhere for the same length of time.

Gross income \$87,955,595.97; Net income or earnings, \$784,041.73.

ALEX. MILLAR, *Secretary*.  
Southern Pacific Company.

STATE OF NEW YORK }  
 NEW YORK COUNTY } SS.

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Alex Millar, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under by hand this 22nd day of September, 1906.

J. B. MAXWELL,  
*Notary Public No. 50.*

My commission expires March 30, 1907.

I, S. W. Hager, Auditor of Public Accounts in and for the State of Kentucky, do hereby certify that the foregoing is a true and correct copy of the report filed in this office as of June 30, 1906, by the Southern Pacific Company for the taxes of 1907.

Given under my hand this the 4th day of September, 1907.

S. W. HAGER,  
*Auditor of Public Accounts,  
 State of Kentucky.*

## EXHIBIT A.

## SOUTHERN PACIFIC COMPANY.

Statement of Capital Assets, June 30, 1906.

## STOCKS.

(Par Value \$100 per share.)

*672,742	shares common stock Central Pacific R'y Co.
13	shares common stock Central Pacific R'y Co.
*270,056	shares capital stock Galveston, Harrisburg & San Antonio R'y.
505	shares capital stock Galveston, Harrisburg & San Antonio R'y.
*33,100	shares capital stock Louisiana Western R. R. Co.
500	shares capital stock Louisiana Western R. R. Co.
*41,641	shares capital stock Mexican International R. R. Co.
80	shares capital stock Mexican International R. R. Co.
*49,940	shares capital stock Morgan's Louisiana & Texas R. R. & S. S. Co.
100,060	shares capital stock Morgan's Louisiana & Texas R. R. & S. S. Co.
*1,236,190.33	shares capital stock Southern Pacific R. R. Co.
363,890.67	shares capital stock Southern Pacific R. R. Co.
49,975	shares capital stock Texas & New Orleans R. R. Co.
21	shares capital stock Texas & New Orleans R. R. Co.
43,800	shares capital stock Carson & Colorado R'y Co.
132,000	shares preferred stock Central Pacific R'y Co.
20,000	shares capital stock Gila Valley, Globe & Northern R'y Co.
19,182	shares capital stock Houston, East & West Texas R'y Co.
3,976	shares capital stock Houston & Shreveport R. R. Co.
99,983	shares capital stock Houston & Texas Central R. R. Co.
10,000	shares capital stock Maricopa & Phoenix & Salt River Val. R. R.
69,701.98	shares common stock Oregon & California R. R. Co.
119,910	shares preferred stock Oregon & California R. R. Co.
100,100	shares capital stock Pacific Mail S. S. Co.
60,000	shares capital stock South Pacific Coast R'y Co.
15,300	shares capital stock Wells, Fargo & Co.'s Express.
2,500	shares capital stock Sunset R. R. Co.

\*Received in exchange for common stock of the Southern Pacific Co. reported outstanding in the report to the Auditor of Public Accounts of Kentucky.

2,000 shares capital stock San Bernardino & Redlands R. R. Co.	
19,997 shares capital stock Southern Pacific Terminal Co.	
1,379.53 shares common stock Southern Pacific Co.	
747 shares preferred stock Southern Pacific Co.	
5,000 shares capital stock Eureka & Klamath River R. R. Co.	
15,610 shares capital stock California & Northwestern R'y Co.	
59,900 shares capital stock San Francisco & North Pacific R'y Co.	
59,804 shares capital stock North Shore R. R. Co.	
100,000 shares capital stock Pacific Electric R'y Co.	
2,160 shares capital stock Inter-California R'y Co.	
4,570 shares capital stock Nevada & California R'y Co.	
1,000 shares capital stock Coast Line R'y Co.	
150 shares capital stock Central California R'y Co.	
1,000 shares capital stock Sacramento Southern R'y Co.	
320 shares capital stock Chico & Northern R. R. Co.	

(Par Value other than \$100 per share.)

14,931,677.40 shares capital stock oil companies, par value \$17,008,436.40.	
163 shares capital stock water companies, par value \$1,900.00.	
2,398.58 shares capital stock miscellaneous companies, par value \$169,753.33.	
100 shares capital stock Cananea, Yaqui River & Pacific R. Co., par value (Mexican currency) \$2,500,000.00.	

#### BONDS.

Face Value.

\$2,000,000 Carson & Colorado R'y Co. First Mortgage 4 per cent bonds. (Estimated value 92.)	
899,000 Central Pacific R'y Co. Through Short Line First Mortgage 4 per cent bonds. (Estimated value 91½.)	
374,000 Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage, Eastern Division, 6 per cent bonds. (Estimated value par.)	
1,558,000 Galveston, Harrisburg & San Antonio R'y Co. 6 per cent Equipment bonds. (Estimated value about 90.)	
1,110,000 Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage bonds. (No interest has ever been earned on these bonds and they are of little value. Under an agreement with the holders of these bonds the fixed charge of interest accruing thereon is waived and interest is to be paid only out of the surplus earnings after the payment of all prior charges. The advances made to this Company for account of deficiency in receipts over expenditures amounted to, on June 30, 1906, \$8,769,419.58.)	

- 800,000 Galveston, Houston & Northern R'y Co. First Mortgage 5 per cent bonds. (Estimated value about par.)
- 2,224,000 Gulf, Western Texas & Pacific R'y Co. First Mortgage 5 per cent bonds. (Estimated value about 90.)
- 150,000 Houston & Shreveport R. R. Co. First Mortgage 6 per cent bonds. (Market value about 110.)
- 425,000 Houston & Texas Central R. R. Co. Lampasas Branch Extension First Mortgage 5 per cent bonds. (Estimated value about 90.)
- 275,000 Los Angeles Interurban R'y Co. First Mortgage 5 per cent bonds. (Estimated value par.)
- 78,000 Maricopa & Phoenix & Salt River Valley R. R. Co. First Mortgage 5 per cent bonds.
- 539,000 Maricopa & Phoenix R. R. Co. First Mortgage 6 per cent bonds. (These bonds are of little value as the earnings of the road usually about pay operating expenses and taxes. For the year ending June 30, 1906, the expenditures exceeded the earnings by \$161,325.14.)
- 252,300 (Mexican currency) Mexican Consolidated Public Debt 3 per cent bonds. (Estimated value about 34 U. S. currency.)
- 548,000 New York, Texas & Mexican R'y Co. Matagorda Division First Mortgage 6 per cent bonds. (Estimated value about 90.)
- 1,822,000 North Short R. R. Co. First Mortgage 5 per cent bonds. (Estimated value par.)
- 32,000 Oregon & California P. R. Co. First Mortgage 5 per cent bonds. (Market value about par.)
- 770,000 Pacific Electric R'y Co. First Mortgage 5 per cent bonds. (Estimated value par.)
- 95,000 Riverside & Arlington R. R. Co. First Mortgage 4 per cent bonds. (Estimated value about 80.)
- 1,249,000 Southern Pacific Co. 4 per cent bonds. (Market value about 96.)
- 243,000 Southern Pacific R. R. Co. First Consolidated Mortgage of 1893 5 per cent bonds. (Market value about 119.)
- 142,000 Sunset R. R. Co. First Mortgage 4 per cent bonds. (Estimated value about 70.)

NOTE.—Bonds marked \* are quoted in the New York market. All other bonds are without quotations.

- 561,000 Texas & New Orleans R. R. Co. First Mortgage Main Line 6 per cent bonds. (Estimated value par.)
- 1,190,000 Texas & New Orleans R. R. Co. Dallas Division First Mortgage 4 per cent bonds. (Market value about 91.)
- 1,292,000 Texas & New Orleans R. R. Co. 6 per cent Equipment bonds. (Estimated value about 90.)
- 3,000 California Calxico School District 6 per cent bonds. (Estimated value par.)
- 3,000 California Silsbee School District 6 per cent bonds. (Estimated value par.)

There were received on account of the hereinbefore mentioned stocks and bonds owned the following sums for the year ending June 30, 1906:

Dividends on stocks.....	\$8,171,157 52
Interest on bonds.....	562,370 83
Total .....	<u>\$8,733,528 35</u>

The above sums are included in the "Profit and Loss" account for the year. See Exhibit B.

#### OTHER PROPERTY.

Steamships running between New York, New Orleans, and Galveston, viz.:

S. S. El Dorado.....	3,531 tons.	S. S. El Cid.....	4,608 tons.
S. S. El Mar.....	3,531 tons.	S. S. El Sud.....	4,572 tons.
S. S. El Monte.....	3,531 tons.	S. S. El Norte.....	4,604 tons.
S. S. El Paso.....	3,531 tons.	S. S. El Rio.....	4,604 tons.
S. S. El Valle.....	4,605 tons.	S. S. El Sigle.....	4,616 tons.
S. S. El Alba.....	4,614 tons.	S. S. El Dia.....	4,613 tons.
S. S. Comus.....	4,828 tons.	S. S. Proteus.....	4,836 tons.
S. S. Chalmette.....	2,982 tons.	S. S. Excelsior.....	3,264 tons.

Tugs El Amigo, 150 tons; Confidence, 53 tons.  
28 Barges.

The gross receipts and net income derived from the operation of the above steamships are included in the statement of Profit and Loss, Exhibit B.

Equipment as follows:

235 Locomotives.

176 Passenger Cars.

5,382 Freight and other cars.

Real estate in San Francisco, Oakland, and in other localities in California.

New York, September 15, 1906.

WM. MAHL,  
Comptroller.

## EXHIBIT B.

## SOUTHERN PACIFIC COMPANY.

Statement of Profit and Loss Account, June 30, 1906.

## RECEIPTS.

Gross transportation and other receipts of lines belonging to companies the capital stock of which is principally owned by the Southern Pacific Co. and which are operated by the Southern Pacific Co. under leases to it.....	\$69,062,266 89
Gross transportation and other receipts of lines belonging to companies the capital stock of which is owned by others than the Southern Pacific Co. and which are operated by the Southern Pacific Co. under leases to it.....	1,142,875 05
Steamship receipts .....	5,990,456 21
Rentals from terminal properties.....	220,944 91
Rentals from other property.....	35,019 13
Rentals from equipment.....	1,538,282 53
Dividends on stocks owned.....	8,171,157 52
Interest on bonds owned.....	562,370 83
Interest on loans and on open accounts.....	1,003,372 51
Profits on bonds sold.....	224,478 00
Miscellaneous .....	4,372 39
Total .....	\$87,955,595 97

New York, September 15, 1906.

WM. MAHL,  
Comptroller.

## EXHIBIT B.

## SOUTHERN PACIFIC COMPANY.

Statement of Profit and Loss Account, June 30, 1906.

## EXPENDITURES.

Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies the capital stock of which is principally owned by the Southern Pacific Co. and which are operated by the Southern Pacific Co. under leases to it .....	\$69,050,394 06
Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies the capital stock of which is owned by others than the Southern Pacific Co. and which are operated by the Southern Pacific Co. under leases to it .....	1,248,743 90
Taxes .....	50,462 71
Rentals other property and facilities .....	10,827 42
Rentals to Central Pacific R'y Co. ....	10,000 00
Rental to Oregon & California R. R. Co. ....	5,000 00
Rental to Southern Pacific R. R. Co. ....	10,000 00
Interest on S. P. Co. 6% Steamship Bonds .....	121,900 00
Interest on S. P. Co. 4% bonds (C. P. stock collateral) ..	1,197,406 67
Interest on S. P. Co. 2-5 years 4% bonds .....	287,993 33
Steamship expenses .....	5,015,004 68
Interest on open accounts .....	798,534 70
Loss in operating Oregon & California R. R. ....	602,174 36
Discount on bonds sold .....	5,240 00
Expenses .....	152,000 33
Adjustment of unsettled claims and accounts .....	30,178 60
Dividends on preferred stock, January 15, 1906 .....	1,384,939 50
Dividends on preferred stock payable July 2, 1906 .....	1,384,939 50
Dividends on common stock payable October 1, 1906 ..	4,946,231 46
Losses by San Francisco fire of April 18, 1906 .....	170,355 57
Cost of stocks written off .....	689,227 45
Total disbursements .....	\$87,171,554 24
Receipts in excess of disbursements .....	*784,041 73
Total .....	\$87,955,595 97

\*This amount has been advanced to companies in which the Southern Pacific Company is interested through the ownership of stock therein, for betterments and additions and to make up deficiencies in their earnings.

A copy, attest:

S. W. HAGER, Auditor.

REPORT  
OF THE  
SOUTHERN PACIFIC COMPANY  
TO THE  
AUDITOR OF PUBLIC ACCOUNTS OF KENTUCKY.

-----  
JUNE 30, 1907.

ARTICLE IV. SUBDIVISION 1.  
ASSESSMENT OF CERTAIN CORPORATIONS.

§ 1. Every Railway Company or Corporation, and guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace car company, dining car company, sleeping car company, chair car company, and every other like company, corporation or association, and also every other corporation, company, or association having or exercising any special or exclusive privilege or franchise, not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town, or taxing district, where its franchise may be exercised. The Auditor, Treasurer and Secretary of State are hereby constituted a Board of Valuation and Assessment for fixing the value of said franchise, except as to turnpike

companies, which are provided for in section 1 of subdivision 4 of this article, the place or places where such local taxes are to be paid by other corporations on their franchise, and how apportioned, where more than one jurisdiction is entitled to a share of such tax, shall be determined by the Board of Valuation and Assessment, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time as the business of the board may require. It shall be the duty of the Attorney-General, when requested by the Board of Valuation and Assessment, to attend said board at its meetings and advise with same in its proceedings.

§ 2. In order to determine the value of the franchises mentioned in the next preceding section, shall annually, *between the thirtieth day of June and the first day of October*, make and deliver to the Auditor of Public Accounts of this State, a statement, verified by its president, cashier, secretary, treasurer, manager, or other chief officer or agent, in such form as the Auditor may prescribe, showing the following facts, viz:

Name of corporation: Southern Pacific Company.

Name the principal place of business of the corporation, company, or association you represent: New York City.

Give the name and official position of the officer making this report: Name, Alex. Millar; Position, Secretary.

The kind of business in which the said corporation, company, or association is engaged: The operating of associated lines.

The amount of capital stock, preferred and common, of the said corporation, company, or association, as of

date June 30, 1907: †Preferred, \$39,569,700.00; Common, \$197,849,258.64.

Number of shares, preferred and common, composing the capital stock of the said corporation, company, or association, on June 30, 1907: ‡Preferred, 395,697; Common, 1,978,492.5864.

Amount of capital stock, as above, paid up, \$237,418,958.64.

Par value of the preferred stock, as above, \$100.00 per share.

Par value of the common stock, as above, \$100.00 per share.

Real value of the stock, as above: Preferred, impossible to state; common, impossible to state.

Highest price at which the stock above mentioned was sold at a *bona fide* sale within twelve months next before June 30, 1907: \$120.38 per share for preferred; \$97.50 per share for common.

Amount of surplus fund and undivided profits, and the value of all other assets of the said corporation, company, or association, on June 30, 1907: Surplus fund, see Exhibit "B;" undivided profits, see Exhibit "B;" value of all other assets, impossible to state. See Exhibit "A" in respect to assets.

---

†Excludes \$16,141,915.25 paid in on account of subscription to 360,000 additional shares of preferred stock to be issued August 30, 1907, under resolution adopted at a special meeting of the stockholders held July 20, 1904.

‡Includes \$16,141,915.25 amount of subscription paid in for additional preferred stock.

State the total amount of indebtedness, as principal, of the said corporation, company, or association, on June 30, 1907:

Bonded indebtedness .....	\$39,329,500.00
Other indebtedness .....	112,435,421.51
Total indebtedness .....	151,764,921.51
Rate of interest paid, 4 and 6 per cent.	
Amount of interest paid on bonds.....	\$1,613,136.66
* Amount of interest paid on loans.....	700,316.98
	<hr/>
	\$2,313,453.64

State separately the total amount of gross and net earnings, or income of the said corporation, company, or association, including interest on investments, and income from all other sources for twelve months next before June 30, 1907:

Gross earnings or income.....	\$27,603,470.00
Less expenses,	
Salaries . . . . .	\$ . . . . .
Wages . . . . .	\$ . . . . .
Interest . . . . .	\$ 2,313,453.64
Dividends . . . . .	\$13,156,965.07
Enlargement of plant . . . . .	\$ . . . . .
Other expenses . . . . .	\$ . . . . .
Total.....	<hr/> \$22,744,494.34
Net income .....	\$4,858,975.66

Amount and kind of tangible property in this State owned by the said corporation, company, or association, on September 1, 1907.

Amount of tangible property: Less than \$10,000.00.

Kind of tangible property: Office furniture.

State where the tangible property aforesaid is situated, assessed or liable to assessment.

County, Jefferson. Town, Beechmont.

State the fair cash value of said tangible property, at the price it would bring at a fair voluntary sale.

Less than \$100.00.

Specify in detail the entire length of line or lines operated, owned, leased, or controlled, in each county, city, town, and taxing district in this State. (Give the length of line in each county, town, or taxing district separately.) None.

#### REMARKS.

All meetings of the stockholders during the year have been held in Beechmont, Kentucky.

All meetings of directors have been held in New York City.

All stocks, bonds, and other securities of the company are kept in either the City of New York or San Francisco, where there is a financial office.

The Company has never had any property (except office furniture) or carried on any business in the State of Kentucky.

A dividend of  $3\frac{1}{2}$  per cent payable January 14, 1907, and of  $3\frac{1}{2}$  per cent payable July 12, 1907, amounting in the aggregate to \$2,769,879.00, was declared by the Company on the outstanding preferred stock.

A dividend of  $2\frac{1}{2}$  per cent payable April 1, 1907, and of  $1\frac{1}{4}$  per cent payable July 1, 1907, and of  $1\frac{1}{2}$  per cent payable October 1, 1907, amounting in the aggregate to \$10,387,086.07, was declared by the Company on the outstanding common stock.

State the total mileage operated, owned, leased, or controlled in this State, none.

Also the total length of the entire line or lines, as above, operated, owned, leased, or controlled, as above, elsewhere than in this State, 6,040.00.

State the entire net and gross income or earnings received by the said corporation, company, or association, in this State and out of this State, on business done in this State for twelve months next before June 30, 1907: Gross income, none; net income or earnings, none.

State the entire gross and net income or earnings received by the said corporation, company, or association, on business done in this State and elsewhere for the same length of time.

Gross income, \$27,603,470.00; net income or earnings, \$4,858,975.66.

ALEX. MILLAR,  
*Secretary Southern Pacific Company.*

STATE OF NEW YORK, }  
NEW YORK COUNTY. } SS.

This day personally appeared before the undersigned, a Notary Public in and for the State and county aforesaid, Alex. Millar, whose signature is attached thereto, and made oath that the statements made in answer to the above interrogatories are true to the best of his knowledge and belief.

Given under my hand this 21st day of September, 1907.

J. B. MAXWELL,  
*Notary Public, No. 60, New York County.*  
My commission expires March 30, 1907.

I, F. P. James, Auditor of Public Accounts in and for the State of Kentucky, do hereby certify that the foregoing together with the copies hereto attached marked Exhibit "A" and Exhibit "B" is a true and correct copy of the report as of June 30, 1907, filed in this office by the Southern Pacific Company for the purpose of 1908 taxation by the State Board of Valuation and Assessment.

Given under my hand and seal this the 20th day of March, 1908.

F. P. JAMES,  
*Auditor of Public Accounts,*  
State of Kentucky.

## EXHIBIT-A.

### SOUTHERN PACIFIC COMPANY.

Statement of Capital Assets, June 30, 1907.

#### STOCKS.

(Par value \$100.00 per share.)

*67,742	shares common stock Central Pacific R'y Co.
13	shares common stock Central Pacific R'y Co.
*270,056	shares capital stock Galveston, Harrisburg & San Antonio R'y.
510	shares capital stock Galveston, Harrisburg & San Antonio R'y.
*33,100	shares capital stock Louisiana Western R. R. Co.
500	shares capital stock Louisiana Western R. R. Co.
*41,641	shares capital stock Mexican International R. R. Co.
80	shares capital stock Mexican International R. R. Co.
*49,940	shares capital stock Morgan's Louisiana & Texas R. R. & S. S. Co.
100,060	shares capital stock Morgan's Louisiana & Texas R. R. & S. S. Co.
*1,236,190.33	shares capital stock Southern Pacific R. R. Co.
363,809.67	shares capital stock Southern Pacific R. R. Co.
*49,975	shares capital stock Texas & New Orleans R. R. Co.
21	shares capital stock Texas & New Orleans R. R. Co.
*43,800	shares capital stock Carson & Colorado R'y Co.

\*Received in exchange for common stock of the Southern Pacific Company; reported outstanding in the report to the Auditor of Public Accounts of Kentucky.

134,000	shares	preferred stock	Central Pacific R'y Co.
20,000	shares	capital stock	Gila Valley, Globe & Northern R'y Co.
19,162	shares	capital stock	Houston, East & West Texas R'y Co.
3,976	shares	capital stock	Houston & Shreveport R. R. Co.
99,983	shares	capital stock	Houston & Texas Central R. R. Co.
10,000	shares	capital stock	Maricopa & Phoenix & Salt River Valley R. R.
69,701.98	shares	common stock	Oregon & California R. R. Co.
119,910	shares	preferred stock	Oregon & California R. R. Co.
100,100	shares	capital stock	Pacific Mail S. S. Co.
60,000	shares	capital stock	South Pacific Coast R'y Co.
15,300	shares	capital stock	Wells, Fargo & Co.'s Express.
2,500	shares	capital stock	Sunset R. R. Co.
2,000	shares	capital stock	San Bernardino & Redlands R. R. Co.
19,996	shares	capital stock	Southern Pacific Terminal Co.
1,379.53	shares	common stock	Southern Pacific Co.
747	shares	preferred stock	Southern Pacific Co.
100,000	shares	capital stock	Pacific Electric R'y Co.
2,160	shares	capital stock	Inter California R'y Co.
4,570	shares	capital stock	Nevada & California R'y Co.
1,000	shares	capital stock	Coast Line R'y Co.
1,000	shares	capital stock	Sacramento Southern R'y Co.
300	shares	capital stock	Central California R'y Co.
320	shares	capital stock	Chico & Northern R. R. Co.
5,000	shares	capital stock	Beaver Hill Coal Co.
54,000	shares	capital stock	California Northeastern R'y Co.
20,000	shares	capital stock	Coos Bay, Roseburg & Eastern R. R. & Nav. Co.
14,100	shares	capital stock	Corvallis & Eastern R. R. Co.

## STOCKS—Continued.

33.33	shares	capital stock	Cushing Land & Town Sites Co.
33.33	shares	capital stock	Huntington Land & Town Sites Co.
1,960	shares	capital stock	Importers Bonded Warehouse Co.
950	shares	capital stock	Lake Charles & Northern R. R. Co.
112	shares	capital stock	Lincoln Northern Railway Co.
22,500	shares	capital stock	Los Angeles R'y Co.
175,000	shares	capital stock	Northwestern Pacific R. R. Co.
500	shares	capital stock	Merced Canyon R'y Co.
130	shares	capital stock	Oroville & Nelson R. R. Co.
6,000	shares	capital stock	Pacific Fruit Express Co.
1,000	shares	capital stock	Pacific Railway & Navigation Co.
12,750	shares	capital stock	Phoenix & Eastern R. R. Co.

5,005 shares capital stock	Rubicon Water & Power Co.
50,000 shares capital stock	Santa Clara Interurban R'y Co.
550 shares capital stock	San Francisco & Napa R'y Co.
1,000 shares capital stock	San Fernando Mission Land Co.
16,826 shares capital stock	San Jose-Los Gatos Interurban R'y Co.

(Par value other than \$100 per share.)

224,632.32 shares capital stock	Oil Companies, par value.	\$18,284,636 40
163 shares capital stock	Water Companies, par value -----	1,900 00
1,261.25 shares capital stock	Miscellaneous Companies, par value -----	73,270 00
255 shares capital stock	Independence & Mammoth R. R. Co., par value -----	12,750 00
50 shares capital stock	Sunset Development Co., par value -----	500 00
73,978 shares common stock	Utah Light & R'y Co., par value -----	1,849,450 00
153,292 shares preferred stock	Utah Light & R'y Co., par value -----	3,832,300 00
100 shares capital stock	Cananea, Yaqui River & Pacific R. R. Co., par value (Mexican Currency)	2,500.00 00
100 shares capital stock	Asia Steamship Co., par value -----	L 100 00
100 shares capital stock	Persia Steamship Co., par value -----	L 100 00

## BONDS.

(Face Value.)

\$2,000,000	Carson & Colorado R'y Co. First Mortgage 4 per cent bonds. (Estimated value 87.)
899,000	Central Pacific R'y Co. Through Short Line First Mortgage 4 per cent bonds. (Estimated value 89.)
374,000	Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage, Eastern Division, 6 per cent bonds. (Estimated value par.)
1,558,000	Galveston, Harrisburg & San Antonio R'y Co. 6 per cent Equipment bonds. (Estimated value about 90.)
1,110,000	Galveston, Harrisburg & San Antonio R'y Co. Second Mortgage bonds. (No interest has ever been earned on these bonds, and they are of little value. Under an agreement with the holders of these bonds the fixed charge of interest accruing thereon is waived, and interest is to be paid only out of the surplus earnings after the payment of all prior charge. The advances made to this Company for account of deficiency in receipts over expenditures amounted to, on June 30, 1907, \$9,450,235.24.)

- 800,000 Galveston, Houston & Northern R'y Co. First Mortgage 5 per cent bonds. (Estimated value about par.)
- 2,224,000 Gulf, Western Texas & Pacific R'y Co. First Mortgage 5 per cent bonds. (Estimated value about 90.)
- 150,000 Houston & Shreveport R. R. Co. First Mortgage 6 per cent bonds. (Market value about 110.)
- 425,000 Houston & Texas Central R. R. Co., Lampasas Branch Extension, First Mortgage 5 per cent bonds. (Estimated value about 90.)
- 1,425,000 Los Angeles Interurban R'y Co. First Mortgage 5 per cent bonds. (Estimated value about 97.)
- 252,300 (Mexican Currency) Mexican Consolidated Public Debt 3 per cent bonds. (Estimated value about 34 U. S. Currency.)
- 548,000 New York, Texas & Mexican R'y Co., Matagorda Division, First Mortgage 6 per cent bonds. (Estimated value about 90.)
- \*32,000 Oregon & California R. R. Co. First Mortgage 5 per cent bonds. (Market value about 98.)
- 770,000 Pacific Electric Co. First Mortgage 5 per cent bonds. (Estimated value par.)
- 95,000 Riverside & Arlington R. R. Co. First Mortgage 4 per cent bonds. (Estimated value about 80.)
- \*1,449,000 Southern Pacific Co. 4 per cent bonds (C. P. Stock Collateral). (Market value about 86.)
- \*243,000 Southern Pacific R. R. Co. First Consolidated Mortgage of 1893, 5 per cent bonds. (Market value about 118.)
- 15,000 Southern Pacific R. R. First Mortgage 6 per cent bonds. These bonds are past due.
- 7,332,000 Southern Pacific R. R. Co. Refunding Mortgage 4 per cent bonds. (Market value about 91.)
- 158,000 Sunset R. R. Co. First Mortgage 4 per cent bonds. (Estimated value about 70.)
- 624,000 Coos Bay, Roseburg & Eastern R. R. & Navigation Co. First Mortgage 6 per cent bonds. (Estimated value about 97.)
- 5,094,000 Northwestern Pacific R. R. Co. First Mortgage  $4\frac{1}{2}$  per cent bonds. (Estimated value about 95.)
- 750,000 Associated Oil Co. First Mortgage 5 per cent bonds. (Estimated value about 90.)
- 3,000 California Calexico School District 6 per cent bonds. (Estimated value par.)
- 3,000 California Silsbee School District 6 per cent bonds. (Estimated value par.)
- 1,510,000 Corvallis & Eastern R. R. Co. First Mortgage 4 per cent bonds. (Estimated value about 60.)
- 175,000 San Jose-Los Gatos Interurban R'y Co. First Mortgage 5 per cent bonds. (Estimated value about 80.)

765,000	Los Angeles Pacific Co. First Mortgage 5 per cent bonds.	(Estimated value about 100.)
3,898,000	San Antonio, Aransas Pass R'y Co. 4 per cent bonds.	(Estimated value about 10.)
561,000	Texas & New Orleans R'y Co. First Mortgage Main Line 6 per cent bonds.	(Estimated value par.)
1,190,000	Texas & New Orleans R. R. Co. Dallas Division First Mortgage 4 per cent bonds.	(Market value about 90.)
1,020,000	Texas & New Orleans R. R. Co. 6 per cent Equipment bonds.	(Estimated value about 90.)
992,000	Utah Light & R'y Co. First Consolidated 5 per cent bonds.	(Estimated value about 90.)
41,000	Utah Light & R'y Co. Collateral Trust 6 per cent notes.	(Estimated value about par.)
1,000	Utah Light & Power Co. Consolidated Mortgage 4 per cent bonds.	(Estimated value about 75.)
990,000	Miscellaneous bonds other than of Railroad Companies.	(Estimated value about par.)

Note.—Bonds marked \* are quoted in the New York market. All other bonds are without quotations.

There were received on account of the hereinbefore mentioned stocks and bonds owned, the following sums for the year ending June 30, 1907:

Dividends on stocks .....	\$14,303,260 40
Interest on bonds .....	1,342,629 88
Total .....	\$15,645,890 28

The above sums are included in the "Profit and Loss" account for the year. (See Exhibit B.)

#### OTHER PROPERTY.

Steamships running between New York, New Orleans, and Galveston, viz.:

S. S. El Dorado ..3,531 gross tons.	S. S. El Cid ....4,608 gross tons.
S. S. El Mar ....3,531 gross tons.	S. S. El Sud ....4,572 gross tons.
S. S. El Monte ...3,531 gross tons.	S. S. El Norte ...4,604 gross tons.
S. S. El Paso ....3,531 gross tons.	S. S. El Rio .....4,604 gross tons.
S. S. El Valle ...4,605 gross tons.	S. S. El Siglo ...4,616 gross tons.
S. S. El Alba ....4,614 gross tons.	S. S. El Dia .....4,613 gross tons.
S. S. Comus .....4,828 gross tons.	S. S. Proteus ....4,836 gross tons.
S. S. Chalmette ...2,982 gross tons.	S. S. Excelsior ...3,264 gross tons.
S. S. Momus .....6,878 gross tons.	S. S. Antilles ...6,878 gross tons.
S. S. Creole .....6,387 gross tons.	
Tug El Amigo... 150 gross tons.	Tug El Toro..... 265 gross tons.
Tug El Chico... 153 gross tons.	Tug Confidence .. 53 gross tons.

One steam barge, 29 other barges.

The gross receipts and net income derived from the operation of the above steamships are included in the statement of Profit and Loss, Exhibit B.

Equipment as follows:

325 locomotives.

244 passenger cars.

6,170 freight and other cars.

Real estate in San Francisco, Oakland, and in other localities in California.

WM. MAHL, Comptroller.

New York, September 16, 1907.

## EXHIBIT B.

### SOUTHERN PACIFIC COMPANY.

Statement of Profit and Loss Account, June 30, 1907.

#### RECEIPTS.

Gross transportation and other receipts of lines belonging to companies, the capital stock of which is principally owned by the Southern Pacific Company, and which are operated by the Southern Pacific Co. under leases to it.....	\$82,201,288 32
Gross transportation and other receipts of lines belonging to companies, the capital stock of which is owned by other than the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it.....	1,455,711 56
Total receipts from operations of lines leased.....	\$83,656,999 88
Less—Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies, the capital stock of which is principally owned by the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it .....	80,555,053 29
Less—Operating expenses, taxes, interest, and all other disbursements for account of lines belonging to companies, the capital stock of which is owned by other than the Southern Pacific Co., and which are operated by the Southern Pacific Co. under leases to it .....	1,359,035 21
	\$81,914,088 50
Balance profit from operation of leased lines.....	1,742,911 38
Steamship receipts .....	7,118,641 94
Rentals from steamships .....	140,359 25
Rentals from terminal properties.....	198,985 52
Rentals from other property.....	226,962 31

Rentals from equipment .....	955,841 61
Dividends on stocks owned .....	14,303,260 40
Interest on bonds owned .....	1,342,629 88
Interest on loans and on open accounts .....	1,539,427 10
Net proceeds from sale and lease of lands .....	32,381 07
Miscellaneous .....	2,069 54
Total receipts .....	\$27,603,470 00

## EXPENDITURES.

Expenses of steamship lines operated .....	\$6,346,979 84
Interest on S. P. Co. 6 per cent steamship bonds .....	113,610 00
Interest on S. P. Co. 4 per cent (C. P. stock collateral) .....	1,209,406 66
Interest on S. P. Co. 2-5 years 4 per cent bonds .....	290,120 00
Interest on open accounts .....	700,316 98
Rental to Central Pacific R'y Co. ....	10,000 00
Rental to Oregon & California R. R. Co. ....	5,000 00
Rental to Southern Pacific R. R. Co. ....	10,000 00
Taxes .....	157,595 72
Expenses .....	126,274 01
Loss on bonds sold .....	9,544 19
Loss in operating Oregon & California R. R. Co. ....	586,496 33
Adjustment of unsettled claims and accounts .....	22,185 54
Dividend on preferred stock, January 14, 1907 .....	1,384,939 50
Dividends on preferred stock, payable July 12, 1907 .....	1,384,939 50
Dividend on common stock, April 1, 1907 .....	4,946,231 46
Dividend on common stock, payable July 1, 1907 .....	2,473,115 73
Dividend on common stock, payable October 1, 1907 .....	2,967,738 88
Total disbursements .....	\$22,744,494 34
Receipts in excess of disbursements .....	*4,858,975 66
Total .....	\$27,603,470 00

\*This amount has been advanced to companies in which the Southern Pacific Company is interested through the ownership of stock therein, for betterments and additions, and to make up deficiencies in their earnings.

WM. MAHL, Comptroller.

New York, September 16, 1907.

A copy, attest:

S. W. HAGER, Auditor.

Filed in Jefferson County Court November 5, 1908.

Exhibit "Charter."

CHARTER OF THE SOUTHERN PACIFIC COMPANY AND THE AMENDMENT THERETO.

Charter of the Southern Pacific Company (Acts 1883-4, page 725).

CHAPTER 403.

"An act to incorporate the Southern Pacific Company.

*"Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

"§ 1. That Henry D. McHenry, Wm. G. Duncan, Samuel E. Hill, Samuel M. Cox, Henry McHenry, Jr., and their associates and successors and assigns, be, and they are hereby, created and constituted a body corporate and politic, under the name of the Southern Pacific Company, and as such shall have perpetual succession, and be capable in law to purchase, grant, sell or receive, in trust or otherwise, all kinds of personal and real property, to such amount as the directors of said company may, from time to time, determine; and to contract and be contracted with, sue and be sued, plead and be impleaded, appear and prosecute to final judgments, all suits or actions at law or in equity in all courts and places; and to have and use a common seal, and to alter the same at pleasure; and to make and establish such by-laws, rules and regulations, for the government of said company and the conduct of its business as said corporation or the stockholders therein shall deem expedient or necessary for the management of its affairs, not inconsistent with the Constitution and laws of this State or of the United States; and generally to do and execute all

acts, matters and things which may be deemed necessary or convenient to carry into effect the powers and privileges herein granted: *Provided, however,* That said corporation shall not have power to make joint stock with, lease, own or operate any railroad within the State of Kentucky.

“§ 2. The said corporation is hereby authorized and empowered to contract for, and acquire by purchase or otherwise, bonds, stocks, obligations, and securities of any corporation, company or association now existing, or hereafter formed or constituted, and bonds, obligations and securities of any individuals, State, Territory, government or local authorities whatsoever, and to enter into contracts with any corporation, company or association, individuals, State, Territory, Government or local authorities, in respect of their bonds, stock, obligations and securities, or in respect of the construction, establishment, acquisition, owning, equipment, leasing, maintenance or operation of any railroads, telegraphs or steamship lines, or any public or private improvements, or any appurtenances thereof, in any State or territory of the United States, or in any foreign country, and to buy, hold, sell and deal in all kinds of public and private stocks, bonds and securities; and said corporation may borrow and loan money, issue its own bonds or other evidences of indebtedness, and sell, negotiate and pledge the same to such amounts, upon such terms, and in such manner as may, from time to time, be determined by the directors of said corporation; and it may mortgage all or any part of its property, assets and franchises to secure such bonds and the interest thereon, on such terms and conditions as shall on that behalf be prescribed by its board of directors.

“§ 3. The capital stock of said corporation shall be one million dollars, divided into shares of one hundred dollars each; which shares shall be deemed personal property, and may be issued, transferred and forfeited for

non-payment in such manner as the board of directors of such corporation may determine; and no person shall be in anywise liable as a stockholder of said corporation after said capital stock to such amount of one million dollars shall have been paid in in cash, and a certificate to that effect signed and sworn to by the treasurer and a majority of the board of directors of said corporation shall have been filed in the office of the Secretary of State of this State; nor shall the said corporation, nor any of the officers or agents thereof, be thereafter bound to make any further returns or certificates: *Provided, however,* That if, after the payment of such capital stock, any part thereof shall be withdrawn for or refunded to any of the stockholders when the property of the corporation is insufficient or will be thereby rendered insufficient for the payment of all its debts, the stockholders receiving the same shall be bound and obliged to repay to said corporation or its creditors the amount so withdrawn or refunded.

“§ 4. Any two of the persons above named as corporators of said corporation may call the first meeting for the organization of such corporation at such time and place as they may appoint, by mailing a proper notice of such meeting to each of such corporators at least ten days before the time appointed; and in case a majority of such corporators shall attend such meetings, either in person or by proxy, they may open books for subscriptions to its capital stock; and whenever five hundred thousand dollars shall be subscribed and ten per cent. of said subscriptions shall be paid in cash, the stockholders of said corporation may organize the same, and said corporation may proceed to business.

“§ 5. Each share of stock entitle the holder thereof to one vote, in person or by proxy, at all meetings of the stockholders; the holders of a majority in interest of the capital stock, present in person or by proxy, shall constitute a quorum. The corporation shall have a lien on all

the stock and property of its members invested therein for all debts due by them to said corporation, which lien may be enforced in such manner as the by-law shall prescribe.

“§ 6. The stock, property and affairs of said corporation shall be managed by a board of directors of such number, not less than three, as may be from time to time determined by the incorporators or stockholders. The directors shall be elected by the stockholders at such time and place, and in such manner, and for such terms, as the stockholders shall from time to time determine. Meetings of directors or stockholders may be held within or without the State. No person shall be elected a director who is not a stockholder of the corporation. A majority of the directors shall constitute a quorum of said board for the transaction of business. The directors shall appoint from their own number a president, and they shall also appoint a clerk and treasurer, and such other officers and agents as they may deem proper, to hold their offices during the pleasure of the board. In case of a vacancy or vacancies in the board, the remaining directors may fill such vacancy or vacancies. The capital stock of said corporation may be increased from time to time to such sums as may be determined by the board of directors of said corporation, provided such increase or diminution shall be approved by at least two thirds in interest of the stockholders of said corporation.

“§ 7. The annual tax upon said corporation shall be the same as is now fixed by law for brokers license: *Provided*, That all property owned by said corporation and situated in the State shall pay the same State and local tax as is assessed upon similar property. And capital stock in said corporation, owned by citizens of the State, shall be assessed against the holders thereof as choses in action under the equalization law.

“§ 8. The company shall keep an office for the transaction of business, and the clerk or assistant clerk of said

corporation shall reside within the State of Kentucky; but the said corporation may keep offices at such places outside of the State as in the judgment of its board of directors its business may from time to time require: *Provided*, That nothing herein contained shall be construed as granting any lottery or banking privileges.

“§ 9. This act shall take effect immediately upon its passage.

“Approved March 17, 1884.”

Amendment to Charter of Southern Pacific Company.

Acts 1887-8, vol. 2, page 310.

#### “CHAPTER 601.

“An act to amend ‘An act to incorporate the Southern Pacific Company,’ approved March 17, 1884.

*“Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

“§ 1. That the act, entitled ‘An act to incorporate the Southern Pacific Company,’ which was approved March 17, 1884, be, and the same is, amended by adding to section 1 thereof the following words, to-wit: Except subject to and in conformity with the provisions of the laws of the State of Kentucky applicable to railroads, and requiring no special rights that may be possessed by any railroads in the State, except the general and ordinary rights of common carriers as possessed by railroads generally.

“§ 2. This act shall take effect from its passage.

“Approved March 21, 1888.”

Filed in the Jefferson County Court Clerk's Office November 16, 1908:

• JEFFERSON COUNTY COURT.

No. 53444.

COMMONWEALTH OF KENTUCKY, BY ETC., - - *Plaintiff,*

*vs.*

No. 2467.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

COMMONWEALTH OF KENTUCKY, BY ETC., - - *Plaintiff,*

*vs.*

No. 3766.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

OPINION.

These two suits have been ordered heard together. In the first one it is claimed that the Southern Pacific Company has omitted property from assessment for the year 1907. In the second one that the said defendant has omitted property from assessment for the year 1908.

This property is divided into two classes: 1st, intangible property consisting of the stocks and bonds as set out in the statement filed herein; and 2nd, tangible property consisting of certain steamships set out by name in the statement filed herein, the value of which steamships is agreed by the parties herein to be \$5,111,572.00 as of September, 1906, and \$8,115,643 as of Sept. 1, 1907. The court will consider these two classes of property in order.

First.—As to the intangible property of the defendant company, in the suit No. 2451, Commonwealth of Kentucky, by etc., v. Southern Pacific Company, the court has already passed upon this question. It was contended in that case by the Commonwealth that the defendant,

Southern Pacific Company, is not such a corporation as is properly liable to a franchise tax under Section 4077 of the Kentucky Statutes, because it does not exercise any special or exclusive privileges and that the action of the State Board of Valuation and Assessment in attempting to impose a franchise tax on defendant is void and not binding on the Commonwealth of the local assessing officers.

There can be no question that the charter of the Southern Pacific Company gives it the right to operate railroads and to act as a holding company. Under said charter it has been exercising said rights, though not in the State of Kentucky. Section 4077 does not require that such companies, corporations, or associations as are embraced in that section shall *exercise* any special or exclusive privilege they may have, the language of said section being that any company, etc., *having or* exercising any special or exclusive privilege shall pay a franchise tax to the State and a proportional local tax to the county, where its franchise *may be* exercised. The defendant company, therefore, in our opinion, comes within and is embraced in Section 4077, and for that reason the State Board of Valuation and Assessment has a right to determine the value of the franchise of defendant company. If defendant is liable, as the court believes it is, to a tax on its franchise, the value of which is properly determinable by the said State Board of Valuation and Assessment, the only question remaining in this case is what effect shall be given the acts of said State Board in assessing said franchise.

Section 4078 and the following sections of the Kentucky Statutes set out how said State Board shall proceed in determining the value of the franchise of a corporation which comes within Section 4077 of the Kentucky Statutes. Defendant's answer sets out a compliance with every requirement of said sections. It alleges

that all of the statements and information required were furnished to the Auditor of the State and that all of said matters were fully considered by the said State Board which had before it a full list of all the assets of the defendant company, and that after a full and fair consideration of said matters, the said Board fixed the franchise value of defendant at \$2,374,189 for the years 1907 and 1908.

As to the effect to be given by the courts to such action of the State Board, the Court of Appeals of Kentucky in the case of *Henderson Bridge Co. v. Commonwealth of Kentucky*, Vol. 99, Ky. Rep. page 645, has this to say:

"It should be further said that the findings of this Board of Valuation and Assessment partake of a judicial nature. The defendant had its day in court. It did appear on notice before that Board and on evidence made its defense. And on this hearing that Board rendered its decision in fixing the value of the franchise of defendant, granted by authority of the State of Kentucky, and this finding, if not conclusive, is entitled to a very high degree of consideration and authority, and it should not be lightly set aside or disregarded by the courts, unless the Board proceed upon an erroneous principle or adopted an improper mode or manner of estimating the value of the franchise, or unless fraud is charged and shown to exist.

"It is not contemplated by the law that every corporation, company, or association operating under and enjoying a franchise from the State shall simply, by denying the correctness of the valuation placed on its franchise by this Board, put again the whole thing in issue and have same reheard and readjudicated by the courts. It would be an insufficient system of revenue for the State if the just taxes against every such corporation, company, or association could only be collected at the end of a separate law suit against each."

This appears to the court to be sound reasoning and a just conclusion. Having no gross income or mileage in this State on which said Board could rely to determine the value of defendant's franchise in Kentucky, said Board assessed defendant's franchise under the Act of 1906, which is in part as follows:

"If the corporation organized under the laws of this State, or of some other State government, be a railroad, telegraph, express, sleeping, dining, palace, or chair car company, or a corporation performing any other public service, the lines of which extend beyond the limits of the State, the said Board will fix the value of the capital stock as hereinbefore provided, and that proportion of the value of the capital stock which the length of the lines operated, owned, leased, or controlled in this State and elsewhere, shall be considered in fixing the value of the corporate franchise of such corporation liable for taxation in this State; and such corporate franchise shall be liable to taxation in each county, incorporated city, town, or district through or into which such lines pass, or are operated, in the same proportion that the length of the line in such county, city, town or district bears to the whole length of lines in this State; but if any such railroad or other corporation organized under the laws of this State have all of its lines outside of this State, the said Board shall fix the value of its entire capital stock as hereinbefore provided, and apportion to this State for taxation therein the proper proportion and not less than one per cent of its said capital stock, and the amount so apportioned shall be the value of its intangible property, including its corporate franchise, stocks, bonds, securities, and choses in action, subject to taxation in this State and in the county, city, town, and dis-

trict where its principal place of business in this State may be located." (Acts of 1906, page 130, Sec. 5.)

In other words the Legislature in this amendment has provided the manner in which the State Board shall arrive at the franchise value of defendant company. Plaintiff contends that the above act is unconstitutional. The court is of opinion that the Constitution gives the Legislature the right to provide as to how such corporations as defendant shall be taxed. The above act applies to any corporation which comes within its provision, and the mere fact that defendant may be the only corporation at present affected by said act does not, in our opinion, render it unconstitutional. The Legislature has directed how this and other similar franchises must be taxed, and it was the duty of the State Board of Valuation and Assessment to act thereunder in accordance with these directions.

In case of *Commonwealth of Kentucky v. Cumberland Telephone & Telegraph Company*, 30 Ky. L. R. 723, the Court of Appeals of Kentucky held that the franchise value of such corporations as defendant which pay a franchise tax includes all of the intangible property of said corporation, such as stocks, bonds, money in bank, accounts, choses in action, and all such property can not be again taxed by the State or county. The only property of defendant therefore which could be assessed by this court under proceedings such as this would be any tangible property of defendant in Jefferson County, which was shown to have been omitted from taxation.

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Second.—As to the tangible property, consisting of the steamships of the value of \$5,111,572 as of Sept., 1906, and \$8,115,643 as of Sept. 1, 1907.

It is agreed that the said steamships are the property of the defendant company and ply between New York and New Orleans and New York and Galveston. It further appears that these ships are enrolled or licensed from the port of New York, and, further, that said defendant company pays no taxes on them in the State of New York or at any other port, and that said defendant company is a corporation created under the laws of Kentucky, with its domicile at Beechmont, Jefferson County, Kentucky.

The question here is whether the said steamships are taxable at the port of enrollment or at the domicile of their owner. It is admitted that said steamships have never been assessed for taxation in the State of Kentucky, the domicile of their owner, nor have any taxes been paid thereon in this State. "Where vessels are owned by a corporation, the residence of the corporation is their home port, and there they are taxable, notwithstanding the corporation may have its offices in another State." (56 American Decisions, page 526; and citing *St. Louis v. Ferry Co.*, 11 Wall. 431; *Transportation Co. v. Wheeling*, 99 U. S. 273; *Middletown Ferry Co. v. Middleton*, 40 Conn. 65; *Pelton v. Northern Transportation Co.*, 37 Ohio St. 450.)

The case of *Ayer & Lord Tie Company v. Commonwealth*, 202 U. S. 421 to 424, reversing 25 Ky. L. R. 1068, seems to the court to decide this question. In that case the steamboats of the Ayer & Lord Tie Co., an Illinois corporation, were enrolled at Paducah, Ky., and had painted the words, "of Paducah, Ky.," on the stern of each boat. Judge Barker, of the Kentucky Court of Appeals, held that these boats were taxable at Paducah, Ky., as their home port, giving his reasons as follows:

"The steamboats involved in this litigation are separated from the residence of their owner by a long distance in both geography and time; in fact, they can never visit the port at which their owner resides; they are, so far as their actual situs is concerned, permanently confined to the rivers over which they float; if their home port had to be Chicago, because that is the residence of their owner, as under the law prior to 1884 when they would have a home port from which they could derive no advantage or protection because they could never reach it. It was to obviate this hardship with others that the Act of 1884 was passed by Congress, permitting their owners to select for them a home port in the field of their operations, which is for them a home port, in fact as well as in law and in name. Property such as that under consideration ought logically to be taxed at its own home port; there it can be seen and properly valued for assessment by the fiscal officers; whereas, at the residence of its owner (Chicago) the officers, of necessity, must rely on the statements of the latter for both its existence and its value. At its home port it enjoys the protection of the laws of the jurisdiction in which it is located and both justice and reason would seem to require that property thus permanently located, both in legal contemplation and in fact within a jurisdiction foreign to that of its owner, should contribute its fair share to the support of that government whose protection it enjoys."

In this opinion Judge Barker agrees with the contention of the defendant in this case. The Supreme Court of the United States, however, in reversing Judge Barker's decision, says:

"It is at once apparent that this line of reasoning whilst it asserts the principle of actual situs and expounds the Act of 1884 as making that the conclusive rule to test the power to tax at once caused the act to destroy the very principle which it was assumed the act upheld. This is the inevitable consequence of the conclusion reached by the court below, that the Act of 1884 endowed the owner of a vessel with the power, simply by painting the name of a place upon his vessel, to make such place the situs for taxation, although it might be neither the actual situs of the property nor the residence of the owner."

Further in the same opinion the Supreme Court said:

"The general rule has long been settled as to vessels plying between the ports of different States, engaged in the coastwise trade, that the *domicile of the owner* is the *situs of a vessel* for the purpose of taxation, wholly irrespective of the place of enrollment, subject, however, to the exception that where a vessel engaged in interstate commerce has acquired an actual situs in a State other than the place of the domicile of the owner, it may be there taxed, because within the jurisdiction of the taxing authority."

Have these steamships owned by the defendant company a situs somewhere else, where they should be taxed rather than at the domicile of the owner? If these ships were navigated wholly within the limits of some other State, they would then, under the cause of the *Old Dominion Steamship Co. v. Virginia*, 198 U. S. 299, have acquired a situs there. In that case, although the vessels were enrolled in New York, the domicile of their owner, and engaged in interstate commerce, they were navigated wholly within the limits of the State of Virginia, and the

ships were held to be properly taxable there. The mere enrollment by the owner of the ships in a certain port, the domicile of the owner being in a different jurisdiction, thus being held not to give a situs to the said ships, and it having been held by the foregoing authorities that such an act of the owner shall not deprive the State of his domicile of the right to tax such property, it follows that these ships of the value of \$5,111,572 as of Sept., 1906, and \$8,115,643 as of Sept. 1, 1907, are properly taxable in Kentucky, the domicile of the Southern Pacific Company, and are tangible property which have been omitted from assessment by said defendant company.

The defendant in its brief cites the following cases which seem to the court to be in line with this opinion. We will briefly discuss these cases.

In *Hays v. Pacific Mail Co.*, 17 How. 596, it was held that the ships belonging to the Pacific Mail Co. were not taxable in California. The Pacific Mail Company was incorporated by the laws of New York. Its principal place of business was in New York. All of the vessels were registered in New York, where the owners resided, and the taxes thereon had been paid to the State of New York. The court in that case held that these ships had not acquired any situs in California, but that their situs was at the home port, the domicile of the owner, and where their taxes had been paid, and hence the State of California could not tax same. This case sustains the reasoning of this opinion.

In *St. Louis v. Wiggins Ferry Co.*, 11 Wall. 423, the boats were owned by an Illinois corporation, which ran the said boats between a point in Missouri and a point in Illinois. It was held that under these circumstances the boats had acquired no situs in the city of St. Louis, Mo., but that their situs was at the domicile of the corporation which owned them, and which, being an Illinois corporation, had its domicile in Illinois, and hence were taxable in Illinois.

In *Morgan v. Parnham*, 16 Wall. 471, it appeared that a citizen of New York owned a certain steamship, which was registered at the port of New York, but plied between the ports of New Orleans and Mobile. The court held that the vessel acquired no actual situs outside the domicile of its owner and was assessable at the domicile of its owner, namely, New York.

In *W. P. & C. Trans. Co. v. Wheeling*, 99 U. S. 273, it was held that a line of steamboats owned by a West Virginia corporation and plying between Wheeling and points on the Ohio and Mississippi Rivers, and enrolled and licensed at Wheeling, W. Va., were taxable there, that being their situs and the domicile of their owner.

The *Old Dominion Steamship Co. v. Virginia*, 198 U. S. 299, has been previously referred to in this opinion. In that case the steamships actually acquired a situs in the State of Virginia, and for that reason alone were held to be taxable there, and not at the domicile of the owner.

The *Ayer & Lord Tie Co.* case has been heretofore discussed in this opinion.

Counsel for defendant in their brief contend that to hold that a vessel plying the high seas necessarily has its situs for taxation at the domicile of its owner, without regard to the facts as to its actual situs, would enable the owners of such vessels to select any—even the most remote place in the United States, and there vest title in the corporation to such vessels, and by this means remove them from the taxing jurisdiction of the State in which they had their actual situs. The court in this opinion does not deny such a contention. Where a vessel has an actual situs, as in the *Old Dominion* case, it should be taxed there, even though not the domicile of the owner. The vessels involved in this case have no situs in any other State of the Union, hence are only taxable at the domicile of the owners. They do not ply exclusively in the waters of any State, as in the *Old Dominion* case and

the Supreme Court has held that the owner can not arbitrarily select a place for the taxation of his vessels in defiance of the law of domicile, and furthermore adds that Section 21 of the Act of 1884 does not give him any such rights, because "if such a construction were upheld, the unlimited right of the owner to arbitrarily frustrate the laws of the State where he was rightfully subject to taxation would result."

The defendant further contends that to tax these ships in Kentucky would be a burden upon and a regulation of interstate commerce. Defendant correctly states the law to be that a State can not law a burden upon interstate commerce by exacting a license to conduct it, but a State can tax property within its jurisdiction, even though that property is used in interstate commerce. The vessels of defendant having no actual situs elsewhere are within the jurisdiction of the State of Kentucky by reason of the fact that their owner is domiciled here.

The cases cited by defendant all hold that the property of corporations engaged in foreign or interstate commerce is subject to State taxation, provided it be within the jurisdiction of the State. As before stated, these vessels are within the jurisdiction of the State of Kentucky, because their owner is domiciled here. It is not necessary that they should be actually themselves within the boundaries of the State. The payment of these taxes on these vessels is not made a condition precedent to the right to carry on the business of defendant company, but its enforcement is left to the ordinary means devised for the collection of taxes, in accordance with the principles laid down by Mr. Chief Justice Fuller in *Postal Tel. Cable Co. against Adams*, 155 U. S. 695.

For the foregoing reasons it is adjudged that these steamships, the property of the Southern Pacific Company, are subject to taxation in the State of Kentucky, and it is ordered that they be assessed for taxation, at

their agreed value of \$5,111,572 as of Sept. 1, 1906, and \$8,115,643 as of Sept. 1, 1907, as property omitted from assessment for the years 1907 and 1908.

ARTHUR PETER, *Judge*.

Nov. 13, 1908.

Filed in the Jefferson County Court November 18, 1908:

JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, BY ETC., - - - *Plaintiff,*

*vs.* No. 2467.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

COMMONWEALTH OF KENTUCKY, BY ETC., - - - *Plaintiff,*

*vs.* No. 3766.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

JUDGMENT.

The two above-entitled causes coming on to be heard and having been heard together upon the pleadings, exhibits, and proof, and the court being advised, delivers a written opinion herein, which is ordered to be filed. Pursuant thereto it is now ordered and adjudged:

1. That the defendant, the Southern Pacific Company, for the year 1907 (that is, as of September 1, 1906), omitted to list and was not assessed for taxation for State and county purposes on the following personal property having a taxable situs in Jefferson County, Kentucky, to-wit:

Steamships Chalmette, Excelsior, El Dorado, El Pasa, El Monte, El Mar, El Sud, El Rio, El Cid, Comus,

Proteus, El Valle, El Dia, El Siglo, El Alba, El Amigo; Tug Confidence and 28 barges; Barge El Toro; all of the fair cash value of \$5,111,572; at which the same are now assessed for taxation for State and county purposes as of September 1, 1906, making the State taxes thereon, at the rate of 50 cents on the hundred dollars, the sum of \$25,557.86; and the taxes of the county of Jefferson at the rate of 32 cents on the hundred dollars, \$16,357.03.

2. That for the year 1908 (that is, as of September 1, 1907), the defendant, Southern Pacific Company, omitted to list and was not assessed for taxation for State and county purposes on the following personal property having a taxable situs in Jefferson County, Kentucky, to-wit:

The steamships above named and in addition thereto the steamers Momus, Antilles, Creole; Tugs, El Chico and El Toro and Barges Cyclops, Penates, and Minerva, in addition to the other tugs and barges above named, all of the fair cash value of \$8,115,643; at which same are now assessed for taxation for State and county purposes as of September 1, 1907, making the State taxes thereon, at the rate of 50 cents on the one hundred dollars, \$40,578.22; and the taxes of Jefferson County, at the rate of 26 cents on the one hundred dollars, \$21,100.67.

3. The clerk of this court is ordered and directed to certify said assessment for said two years to the Auditor of Public Accounts of the Commonwealth of Kentucky and the Sheriff of Jefferson County. The Sheriff is directed to collect the taxes thereon, together with the costs and a penalty of 20 per cent on each amount, as other taxes are collected by him, and to pay the penalty of 20 per cent for the year 1907 to M. J. Holt, Attorney of record for George H. Alexander, four-fifths and Holland L. Anderson, one-fifth; and to pay the penalty for the year 1908 to M. J. Holt, Attorney of record for Holland L. Anderson and J. W. Cassaday, the penalty for

the year 1908 to be equally divided between Holland L. Anderson and J. W. Cassaday.

4. It is further adjudged that no other property was omitted by the defendant from assessment for either of said years.

The County Attorney, Joseph Selligman, was present and assisted in the prosecution of this case, both in the preparation and at the final hearing.

ARTHUR M. PETER,

*Judge of the Jefferson County Court.*

Seen JOSEPH SELLIGMAN,

*County Attorney.*

M. J. HOLT,

*For Plaintiff.*

HUMPHREY, DAVIE & HUMPHREY,

*For Defendant.*

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Filed in the Clerk's Office of the Jefferson County Court  
February 8, 1908, at 4:45 P. M.:

No. 3766.

### JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, ON RELATION OF

JOHN W. CASSADAY, REVENUE AGENT, - - - *Plaintiff,*

*vs.*

STATEMENT.

THE SOUTHERN PACIFIC COMPANY, - - - *Defendant.*

John W. Cassaday, the duly authorized and qualified Revenue Agent for the State of Kentucky in Jefferson County, brings this action on behalf of the Commonwealth and states that the defendant is a corporation of the State of Kentucky, duly organized and existing by virtue of law

with power to sue and be sued, contract and be contracted with, and having for its purposes of business, among other things, the conducting, managing, and carrying on of a general railroad and steamship business, and further privileged to own lands, personal property of various description and to own and hold bonds, certificates of stock, securities, franchises, and choses in action; that the home office of the defendant is in Jefferson County, Kentucky, and that in said county and State it is duly chargeable and assessable for its holdings and other personal property, and liable on such assessment for State and county taxes; that defendant failed and omitted to assess personal property of various and sundry description as shall be hereinafter enumerated, assessable as of September 1, 1907, the same to be taxable for the year 1908; and that it so failed to list for assessment such property, and that no assessing officers, railroad commission, Board of Valuation or Board of Supervisors has listed the same, and that all of the same are now subject to assessment for the year aforesaid; that said omissions and the value thereof as is chargeable as aforesaid consists of the following property and for the following amounts, to-wit:

Gross transportation and other receipts of lines belonging to companies, the capital stock of which is owned by the Southern Pacific Company and which are operated by the Southern Pacific Company of the value of.....	\$82,576,478.50
Steamship receipts of the value of.....	12,950,000.00
Rentals from terminal property of the value of .....	632,471.00
Rentals on other properties of the value of.	452,000.00
Rentals from equipment of the value of...	3,674,000.00

Dividends on stock owned by defendant of the value of.....	1,826,400.00
Interest on bonds owned by defendant of the value of.....	936,000.00
Interest on loans and open accounts of the value of .....	539,300.00
Proceeds from sale of lands of the value of . . . . .	42,600.00
Profits on bonds sold by defendant of the value of .....	834,500.00

That all of the aforesaid personal property, and the amounts named, are now duly assessable as aforesaid and taxable for State and county purposes, and the plaintiff herein asks that the same be duly assessed and that taxation thereon be affixed at the rate fixed by law for the year 1908 for the State of Kentucky and Jefferson County.

Wherefore plaintiff asks for an assessment on the property of the defendant, as enumerated, for the sum of \$104,462,749.50; for twenty (20%) per cent penalty due the relator herein; for costs of this action and for all proper relief.

THE COMMONWEALTH OF KENTUCKY,

By JOHN W. CASSADAY, *Revenue*

*Agent, Jefferson County, Kentucky.*

C. F. OGDEN, *Attj. for Plaintiff.*

Thereupon on the 8th day of February, 1908, the Clerk of the Jefferson County Court issued summons and copy, which said summons is as follows, to-wit:

JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY.

*To the Sheriff of Jefferson County, Greeting:*

You are commanded to summon the Southern Pacific Company to answer on the first day of the next regular term of the Jefferson County Court, which does not commence within five days from the service of this summons, a statement filed against it by Commonwealth of Kentucky by John W. Cassaday, Revenue Agent for the State at Large, and show cause why it should not be assessed for the years therein mentioned, on certain personal property as fully set out and described in said statement filed, and warn it that upon its failure to answer said statement, the allegations of the same will be taken for confessed (as true against it) and judgment will be rendered thereon according to law.

Witness Mark H. Gabhart, Clerk of the Jefferson County Court this 8th day of February, 1908.

MARK H. GABHART, *Clerk.*

By R. E. HANCOCK, *D. C.*

The return of the Sheriff on the foregoing summons is as follows, to-wit:

Came to hand February 8, 1908, at 1:30 P. M.

Executed March 9, 1908, on the Southern Pacific Company by delivering a copy of the within summons to J. B. Weaver, Agent of said company, he being chief officer found in this county at this time.

CHAS. L. SCHOLL, *S. J. C.*

By HITE W. LAVIELLE, *D. S.*

Filed in the County Clerk's Office March 2, 1908:

JEFFERSON COUNTY COURT.

No. 3766.

COMMONWEALTH OF KENTUCKY, ON RELATION OF

JOHN W. CASSADAY, REVENUE AGENT, - - Plaintiff,

VS.

PLEA IN ABATEMENT.

SOUTHERN PACIFIC COMPANY, - - - Defendant.

The defendant, the Southern Pacific Company, states that on February 8, 1908, the same day that this suit was filed, there was filed in this court a supplemental statement under Section 4241 of the Kentucky Statutes by the Commonwealth of Kentucky, on the relation of Holland L. Anderson, Revenue Agent for the State at Large, same being Number 2467. The statement in this cause and the statement in the other cause both allege a failure upon the part of the Southern Pacific Company to list property for assessment for the year 1908, and the two suits embrace in whole or in part the same property. Defendant is advised that the Commonwealth can not maintain two suits, under Section 4241, for the same year. It pleads in abatement of this suit said suit No. 2467, Commonwealth of Kentucky, on relation of Holland L. Anderson, against this defendant, and asks the court to require the Commonwealth to elect which of said two suits it will prosecute.

Wherefore defendant prays, etc.

HUMPHREY & HUMPHREY,  
Attorneys for Defendant.

Filed in the Jefferson County Court May 4, 1908:

JEFFERSON COUNTY COURT.

No. 3766.

COMMONWEALTH OF KENTUCKY, ON RELATION OF

JOHN W. CASSADAY, REVENUE AGENT, - - - *Plaintiff,*

*vs.*

ANSWER.

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant.*

The defendant, the Southern Pacific Company, in answer to the statement herein, says:

1. It denies that it failed to list for assessment any property subject to assessment against it in the State of Kentucky as of September 1, 1907, or taxable for the year 1908, and it denies that no assessing officers have listed such property, and denies that any property it has is subject to any further assessment. It denies that there have been any omissions of assessment. It denies that any items set forth in the statement were omitted from assessment as of September 1, 1907, for the year 1908, or that any part of said items was omitted. It denies that, except as hereinafter set forth and assessed, any of such items are assessable for taxation for the year 1908.

2. Further answering, this defendant says that it is a corporation created by and under the laws of the State of Kentucky by two acts of the Kentucky Legislature—an act entitled, "An Act to incorporate the Southern Pacific Company," approved March 17, 1884, and an act amendatory of the said act, approved March 21, 1888; that all of its steamship and railroad lines have at all times been outside of the Commonwealth of Kentucky; that by the terms of its charter it was required to pay a tax of \$150 a year; that it paid said tax from year to year down to and including the year 1894, never at any time,

before or since, having any property in Kentucky or carrying on any business here. In the year 1895 the then Auditor of Kentucky, L. C. Norman demanded of defendant that it make a return under Section 4077, Kentucky Statutes. In 1896 the then Auditor of Kentucky, Samuel H. Stone, made a similar demand upon this defendant, insisting that the tax fixed in its charter had expired by the passage of the revenue law of November, 1892. This defendant appeared before the State Board of Valuation and Assessment and stated, and stated truly, that it had no property whatsoever in the State of Kentucky, except possibly of the value of \$100, and that it carried on no business whatever in the State of Kentucky. Through its counsel this defendant appeared before the State Board of Valuation and Assessment repeatedly, during the year 1897, and the extent of its liability for assessment and the method of assessment under the laws of Kentucky were fully argued and discussed with the said Board of Valuation and Assessment and with the then Attorney-general, in all its phases, the defendant at all times insisting that its charter was of no value, that it had no exclusive or peculiar privilege, that it did no business in Kentucky and that if it were to be subjected to a burden of taxation which was more than commensurate with the expense of dissolving the Kentucky corporation and taking out a charter in another State, it would be compelled so to do. In November, 1897, the defendant filed with the State Board of Valuation and Assessment a full statement for the years 1892, 1893, 1894, 1895, 1896, and 1897 of all its rights, properties, and franchises, including all its stocks, bonds, securities, choses in action, and other property as called for by the said State Board of Valuation and Assessment and by the sections of the law in force, directing returns to be made to the Auditor, to be laid before the State Board of Valuation and Assessment. Many conferences fol-

lowed between this defendant and the State Board of Valuation and Assessment and the Attorney-general, and the whole matter of law and fact was gone over in argument, both orally and in writing, the said Attorney-general and the said State Board of Valuation and Assessment being in full possession of all the facts in the case and of the amount of property and the value of the property of this defendant, where it was situated and how it was used. The final determination of the said State Board of Valuation and Assessment was that under the law this defendant should be assessed upon its franchise, the amount of such assessment to be determined by the said Board of Valuation and Assessment, taking into consideration the amount of its earning in and out of Kentucky and deducting nothing for tangible property, as none was assessed or assessable in Kentucky. Having arrived at this conclusion upon the law and facts of the case, the said Board fixed the assessment at the sum of \$1,000,000. This defendant acquiesced in the same and paid taxes upon such an assessment for the years 1893, 1894, 1895, and 1896. The State Board of Valuation and Assessment followed the same method and made the same assessment for the years 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, and 1906. For all these periods the defendant, within the time prescribed by Sections 4077 and following, filed with the State Board of Valuation and Assessment a full statement of all its properties, rights, and franchises, tangible and intangible, including the items mentioned above as having been included in its former reports, and each year for which such assessment was made the defendant has paid the tax demanded on the said assessment. The defendant repeats that the said State Board of Valuation and Assessment and the Attorney-general, the principal law officer of the Commonwealth, were fully informed of defendant's position in this matter of all the facts of the case, of the ownership

of its property, where it was situated and how it was used, and of the fact that if the defendant's view of the law was not correct, and if there was a right to make an assessment upon all of its property and all of its capital stock, or any assessment other than the one arrived at by the method above described, the defendant would be compelled to surrender the charter which it had in Kentucky and dissolve the Kentucky corporation. And so it is that the principal taxing authorities of the State of Kentucky, being thus fully informed of the defendant's contention in the matter and of all the facts in the case, and having fully and with the advice of the chief law officer of Kentucky, examined into the laws of Kentucky upon the subject of such assessment, determined that a proper construction of the law on the subject was to subject the defendant to such franchise assessment as was made, and no other assessment of any sort. And defendant states that this practical construction, made after such full consideration as aforesaid, has been acquiesced in ever since by the State Board of Valuation and Assessment.

Defendant further says that this subject of the taxation of the Southern Pacific Company and what was the method under the law by which it should be taxed was a matter of great public notoriety, arguments, oral and written, were made; the subject was discussed in the newspapers and in the Legislature, and had the consideration not only of the State Board of Valuation and Assessment, which was in office from January 1, 1896, to January 1, 1900, but also of the State Board of Valuation and Assessment which was in office from January 1, 1900, to January 1, 1904, and the State Board of Valuation and Assessment which was in office from January 1, 1904, to January 1, 1908; exactly the same returns have been made each year, and the assessment has never been made in any year except according to this construction of

the law as thus arrived at. The defendant further says that when the revenue law came to be revised in the year 1902 no change was made therein which can in any way affect the liability of this defendant for any further taxation. Defendant further says that when the revenue law came to be revised in 1906 a full discussion was had on this subject before the Joint Committee of the Senate and House of Representatives having the bill in charge; the whole subject was gone into and fully explained; and thereupon there was included in Article IV, Subdivision 1 of said revenue law, the follows:

"Section 5. If the corporation organized under the laws of this State, or of some other State government, be a railroad, telegraph, telephone, express, sleeping, dining, palace or chair car company or a corporation performing any other public service, the lines of which extend beyond the limits of the State, the said board will fix the value of the capital stock as hereinbefore provided, and that proportion of the value of the capital stock which the length of the lines operated, owned, leased, or controlled in this State bears to the total length of the lines owned, leased, or controlled in this State and elsewhere shall be considered in fixing the value of the corporate franchise of such corporation liable for taxation in this State; and such corporate franchise shall be liable to taxation in each county, incorporated city, town, or district through or into which such lines pass or are operated in the same proportion that the length of the line in such county, city, town, or district bears to the whole length of lines in this State; but if any such railroad or other corporation organized under the laws of this State have all of its lines outside of this State, the said Board shall fix the value of its entire capital stock as hereinbefore

provided, and apportion to this State for taxation therein the proper proportion and not less than one per cent of its said capital stock, and the amount so proportioned shall be the value of its intangible property, including its corporate franchises, stocks, bonds, securities, and choses in action, subject to taxation in this State and in the county, city, town, and district where its principal place of business in this State may be located."

And so it is, the defendant repeats, that this construction of an apportioned assessment was made and acquiesced in from year to year by the taxing authorities of Kentucky, who have for each year from 1892 to this date had before them a full statement of all the rights, properties, and franchises of this defendant, tangible and intangible, at all times, with full knowledge that if this construction was not to be adhered to, it would be impossible for this defendant to continue in existence, and that if such construction were to be departed from, it would be necessary, and it was the purpose of the stockholders of this defendant, to surrender its charter.

Defendant says that under the law it is plain that only a proportion of its capital stock could at any time be assessed in Kentucky, such proportion being arrived at either by taking into consideration the miles of road in Kentucky and the miles of road out of Kentucky, or the earnings in Kentucky and the earnings out of Kentucky, and defendant says that if there is any doubt as to the construction of the law, the same has for these very many years and by these successive State boards of valuation and assessment received a practical construction, and the same practical construction has been adopted by the Legislature in the revenue law of 1906.

Defendant further says that on or before October 1, 1906, and on or before October 1, 1907, it filed with the

Auditor the report required from it under that part of the Act of 1906 which answers to Sections 4078 and following of the Kentucky Statutes, such return having been made, as required by the Act of 1906, as of July 1, 1906, and July 1, 1907. Defendant states that the State Board of Valuation and Assessment, pursuant to the terms of the Act of 1906, assesses the franchise of this defendant for the year 1907 and for the year 1908, and defendant has paid the State and county taxes on such assessment for the year 1907 and the State tax upon such assessment for the year 1908, and is ready to pay the county tax on the assessment for 1908 whenever the same shall be certified by the Auditor to the County Clerk of Jefferson County.

The defendant further says that under the revenue law of the State of Kentucky, as passed after the adoption of the present Constitution, it was provided that certain corporations, as described in Section 4077 of the Kentucky Statutes, should be subjected to a franchise tax, and with a view of ascertaining this franchise, the corporation has always been required to make a report under Section 4078 and to give such other information as the Auditor or the State Board of Valuation and Assessment might demand. The State Board of Valuation, upon consideration of such report and such other information, fixed the value of the franchise. If the corporation is one which, under Section 4077 of the Kentucky Statutes, is subjected to a franchise tax—that is, a railroad, telegraph, telephone, express, sleeping, dining, palace, or chair car company, or other like company organized under the laws of Kentucky or any other State or government, the lines of which extend beyond the limits of the State, the State Board of Valuation and Assessment fixes the value of its capital stock, and that proportion of the value of the capital stock which the length of the lines operated, owned, leased, or controlled in Kentucky

bears to the total length of the lines owned, operated, leased or controlled in this State and elsewhere is considered in fixing the value of the corporate franchise of such corporation liable for taxation in Kentucky. There is deducted the value of the tangible property assessed in Kentucky. Included in this valuation of the capital stock of all these corporations is the value of the stocks, bonds, securities, and choses in action belonging to such corporations, and the same are not otherwise assessed or taxed. Defendant says that the State Board of Valuation and Assessment is bound by law and has always conceived such to be its duty, in assessing the franchise of this defendant down to the time of the passage of the Act of 1906, to take into consideration either the gross earnings rule or the mileage rule, and in this way to assess only such proportion of its intangible property, including its stocks, bonds, securities, and choses in action, as would result from taking into consideration either the one rule or the other, and since the passage of the Act of 1906 has followed the apportionment rule there laid down.

Defendant says that if the said Board of Valuation and Assessment had, for any of said years, adopted a different method, or if any assessing officer in Kentucky had attempted to assess all of the intangible property of this defendant, or had proceeded upon a basis different from that above described, this being the basis employed for all similar corporations organized under the laws of Kentucky or other States and doing business in Kentucky, such action would be an unjust and unlawful discrimination against this defendant and would deprive it of its property without due process of law, and deny to it the equal protection of the laws, contrary to Article Fourteen of the Amendments of the Constitution of the United States which this defendant hereby specifically pleads, sets up, and relies upon.

WHEREFORE the defendant prays that this proceeding may be dismissed.

HUMPHREY & HUMPHREY,  
*Attorneys for Defendant.*

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At a court held on 2nd day of January, 1909:

This action was set at rules by plaintiff or appellee on the 28th day of December, 1908.

By consent of parties it is ordered that this case be transferred to Chancery Branch, First Division of this court; that it be consolidated with action No. 53446 and that they be assigned to January 14, 1909, for hearing with leave to both parties to take proof.

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At a court held on the 7th day of January, 1909:

By agreement ordered that the testimony to be taken in this action in Jefferson County shall be taken by Alonzo Walker, the official stenographic reporter of this court, upon notice to counsel of record and this case is now referred to him for that purpose.

Said reporter shall take testimony in shorthand and cause a full and accurate transcript of same to be made and filed among the papers of this case, and when so filed said testimony shall constitute a part of the record in this case and shall be read in evidence herein; and when attested by the judge before the trial is had, said testimony may be taken without being copied to the Kentucky Court of Appeals, to be used upon any appeal from any judgment that may be rendered in this case, and said transcript shall thereafter be returned to this court.

At a court held on the 14th day of January, 1909:

By agreement of parties, by counsel, it is ordered that this action be and is hereby consolidated under action 53444 and set for this day for hearing.

Thereupon came the parties, by counsel, and this action having been fully heard and the court being advised, ordered that it be and is submitted.

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At a court held on the 27th day of February, 1909:

The court being advised delivered a memorandum of opinion and endorsed on the wrapper of pleadings of case No. 53444 which is ordered to be and is now filed in each of the two styled actions and made a part of the record herein.

Pursuant to the foregoing opinion it is ordered that the petition in each of said cases be and they are dismissed, to which plaintiffs, by counsel, excepts.

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Said opinion filed herein on the 27th day of February, 1909, is as follows, to-wit:

The cases involve the taxing of defendant's company, tangible and intangible personal property for 1907 and 1908.

The County Court assessed and taxed the tangible personalty (ships, etc.), but declined to either assess or tax the intangible personal property holding as to the last item that it had been properly estimated in fixing the defendant's franchise under the Act 1906. (Com. v. Cum. Tel & Tel. Co., 30 Ky. 723.)

In a written opinion this day filed in cases 45770 and 50619, Commonwealth v. S. P. Co., I have considered the questions here presented. Secs. III, IV, and V of that opinion are applicable to and dispose of that case.

I agree with the County Judge as to his ruling upon the intangible personalty, but can not concur in his finding that the tangible personalty (ships) is taxable in this State.

The petition in each case will have to be dismissed.

SHACKELFORD MILLER, *Judge*.

February 27, 1909.

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JEFFERSON CIRCUIT COURT, CHANCERY  
BRANCH, FIRST DIVISION.

COMMONWEALTH OF KENTUCKY, BY ETC., - - - *Plaintiff*,

*vs.* No. 53444.

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant*.

JUDGMENT.

COMMONWEALTH OF KENTUCKY, BY ETC., - - - *Plaintiff*,

*vs.* No. 53446.

SOUTHERN PACIFIC, - - - - - *Defendant*.

At a court held February 27, 1909:

These causes having come on to be heard were tried together, and the court being advised, delivered a written opinion herein, being the same opinion now filed and made a matter of record in the case of Commonwealth of Kentucky, by D. L. Hardesty, Revenue Agent, v. Southern Pacific Company, *et al.*, No. 45770, decided this day. And the said opinion is now ordered to be made a part of this record.

And the court being advised, it is considered by the court that the judgments of the County Court in the

above-styled causes, so far as they assume to make an assessment against the Southern Pacific Company, be set aside and held for naught, and that the petition in both of said causes be and it is hereby dismissed, to all of which the Commonwealth of Kentucky excepts and prays an appeal to the Court of Appeals, which is granted.

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Said opinion filed herein will be found copied in the cases No. 45770, Commonwealth of Kentucky, by etc., v. Southern Pacific Company, and No. 50619, Commonwealth of Kentucky, by etc., v. Southern Pacific Company, which said cases are transmitted to the Court of Appeals at the same time this case is forwarded to said Court of Appeals, and reference is here made to said opinion the same as though it were copied herein. (See Appendix.)

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STATE OF KENTUCKY.  
COUNTY OF JEFFERSON.

No. 53446.

Pleas before His Honor, Shackelford Miller, Judge of the Jefferson Circuit Court, Chancery Branch, First Division, at the Court House in the City of Louisville, County and State aforementioned and on dates herein-after mentioned.

THE COMMONWEALTH OF KENTUCKY, BY ETC., - *Plaintiff,*

vs.

TRANSCRIPT OF RECORD.

THE SOUTHERN PACIFIC COMPANY, - - - *Defendant.*

BE IT REMEMBERED, That heretofore, to-wit, on the 5th day of December, 1908, came the defendant, by counsel, and filed the following transcript of judgment herein.

## JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY.  
JEFFERSON COUNTY.

BE IT REMEMBERED, That at a court held for the court aforesaid on the 18th day of November, 1908, at the Court House in Louisville, Jefferson County, Kentucky, the following judgment was entered in action No. 3467, Commonwealth of Kentucky, by George H. Alexander, Revenue Agent for the State at Large, v. Southern Pacific Company, No. 3766, Commonwealth of Kentucky, on relation of Judge W. Cassaday, Revenue Agent, v. Southern Pacific Company, to-wit:

## JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, BY ETC., - - *Plaintiff*,  
*vs.* No. 2467.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant*.

COMMONWEALTH OF KENTUCKY, BY ETC., - - *Plaintiff*,  
*vs.* No. 3766.

SOUTHERN PACIFIC COMPANY, - - - - *Defendant*.

## JUDGMENT.

The two above-entitled causes coming on to be heard and having been heard together upon the pleadings, exhibits, and proof, and the court being advised, delivers a written opinion, which is ordered to be filed. Pursuant thereto it is now ordered and adjudged:

1. That the defendant, the Southern Pacific Company, for the year 1907 (that is, of September, 1906), omitted to list and was not assessed for taxation for State and county purposes on the following personal property, having a taxable situs in Jefferson County, Kentucky, to-wit:

Steamships Chalmette, Excelsior, El Dorada, El Paso, El Monte, El Mar, El Sud, El Norte, El Rio, El Sid, Comus, Proteus, El Valle, El Dia, El Siglo, El Alba, El Amigo; Tug Confidence and 28 barges; Barge El Toro; all of the fair cash value of \$5,111,572.00; at which the same are now assessed for taxation for State and county purposes as of September 1, 1906, making the State taxes thereon at the rate of 50 cents on the hundred dollars, the sum of \$25,557.86; and the taxes on the county of Jefferson, at the rate of 32 cents on the hundred dollars, \$16,357.03.

2. That for the year 1908 (that is, as of September 1, 1907), the defendant, Southern Pacific Company, omitted to list and was not assessed for taxation for State and county purposes on the following personal property having a taxable situs in Jefferson County, Kentucky, to-wit:

The steamships above named, and in addition thereto the steamers Momus, Antilles, and Creole; Tugs, El Chico and El Toro and barges Cyclops, Penates, and Minerva, in addition to the other tugs and barges above named; all of the fair cash value of \$8,115,643.00; at which same are now assessed for taxation for State and county purposes as of September 1, 1907, making the State taxes thereon at the rate of 50 cents on the one hundred dollars, \$40,578.22; and the taxes of Jefferson County, at the rate of 26 cents on the one hundred dollars, \$21,100.67.

3. The clerk of this court is ordered and directed to certify said assessment for said two years to the Auditor of Public Accounts of the Commonwealth of Kentucky and the Sheriff of Jefferson County. The Sheriff is di-

rected to collect the taxes thereon, together with the costs and a penalty of twenty per cent on each amount as other taxes are collected by him, and to pay the penalty of twenty per cent. For the year 1907 to M. J. Holt, Attorney of Record for George H. Alexander, four-fifths, and Holland L. Anderson, one-fifth; and to pay the penalty for the year 1908 to M. J. Holt, Attorney of Record for Holland L. Anderson and J. W. Cassaday, the penalty for the year 1908 to be equally divided between Holland L. Anderson and J. W. Cassaday.

4. It is further adjudged that no other property was omitted by the defendant for assessment for either of said years.

The County Attorney, Joseph Selligman, was present and assisted in the prosecution of this case both in the preparation and at the final hearing.

Costs.

Clerk . . . . .	\$17 10
Depositions . . . . .	6 00
Sheriff . . . . .	1 20
	<hr/>
	\$24 30

In testimony whereof and that the foregoing judgment is truly and completely copied from the records of the court aforesaid, I, Mark H. Gabhart, Clerk of said court hereunto set my hand this 4th day of December, 1908.

MARK H. GABHART,  
*Clerk Jefferson County Court, Ky.*

Thereupon on the 5th day of December, 1908, the following bond was executed and filed in the Clerk's office:

### JEFFERSON CIRCUIT COURT.

Commonwealth of Kentucky, Jefferson County, County Court Nos. 2467 and 3766.

### APPEAL BOND.

COMMONWEALTH OF KENTUCKY, BY ETC., - *Plaintiffs,*

*vs.*

SOUTHERN PACIFIC COMPANY, - - - - *Defendant.*

The Southern Pacific Company having prayed an appeal to the Jefferson Circuit Court, from the judgment of the Jefferson County Court rendered 18th day of November, 1908, for (25,557.86) Twenty-five thousand, five hundred and fifty-seven and 86-100 Dollars; (\$16,357.03) Sixteen thousand, three hundred and fifty-seven and 03-100 Dollars; (\$40,578.22) Forty thousand, five hundred and seventy-eight and 22-100 Dollars; (\$21,100.67) Twenty-one thousand, one hundred dollars and 67-100, and twenty per cent penalty on said amounts and cost.

Now we covenant that the said Southern Pacific Company shall satisfy and perform the judgment of the court that may be rendered against it upon the appeal herein.

Witness our hands this 5th day of December, 1908.

SOUTHERN PACIFIC COMPANY,

By Alex P. Humphrey, *Atty.*

THE UNITED STATES FIDELITY & GUARANTY CO.,

[SEAL.]

By James G. Dugan,

*Attorney in Fact.*

Attest: W. L. WELLER, JR., *Clerk,*

By R. Kaltenbacher, *D. C.*

Thereupon on the 5th day of December, 1908, the Clerk issued supersedeas and copy, which said supersedeas is as follows, to wit:

JEFFERSON CIRCUIT COURT.

*To Hon. Arthur Peter, Judge Jefferson County Court of Jefferson County, in the State of Kentucky.*

You are hereby enjoined from all proceedings on a judgment rendered in favor of Commonwealth of Kentucky, by etc., Nos. 2467 and 3766 against Southern Pacific Company from judgment rendered on the 18th day of November, 1908, and \$24.30 costs, the said Southern Pacific Company having appealed to the Jefferson Circuit Court, and given bond and security, according to law, in my office as Clerk of said court, and you are hereby required to return the papers to said office.

Witness W. L. Weller, Jr., Clerk of said court, this 5th day of December, 1908.

W. L. WELLER, JR., *Clerk,*

By R. Kaltenbacher, *D. C.*

The return of the sheriff on the foregoing supersedeas is as follows, to wit:

Came to hand December 7, 1908, at 10:45 A. M.

Executed December 7, 1908, on Hon. Arthur Peter, Judge Jefferson County Court, by delivering to him a copy of the within supersedeas.

CHAS L. SCHOLL, *S. J. C.*

By Hite W. LaVielle, *D. S.*

Thereupon on the 5th day of December, 1908, the Clerk issued summons and five copies, which said summons is as follows, to wit:

# THE COMMONWEALTH OF KENTUCKY.

*To the Sheriff of Jefferson County, Greeting:*

We command you to summon Commonwealth of Kentucky, by etc., Nos. 2467 and 3766 to appear before the Judge of the Jefferson Circuit Court, in twenty days from service hereof, to answer an appeal taken to said court by Southern Pacific Company from a judgment rendered in favor of Commonwealth of Kentucky, by etc., by Hon. Arthur Peter, Judge Jefferson County Court for said County from judgment rendered on the 18th day of November, 1908, etc., and \$24.30 costs.

Witness W. L. Weller, Jr., Clerk of said court, this 5th day of December, 1908.

W. L. WELLER, JR., *Clerk,*

By R. Kaltenbacher, *D. C.*

The return of the sheriff and appearance of Commonwealth on the foregoing summons are as follows, to wit:

Came to hand December 7, 1908, at 10:45 A. M.

Executed December 7, 1908 on John W. Cassaday, Revenue Agent for the Commonwealth of Kentucky, Jefferson County, by delivering to him a copy of the within summons.

CHAS L. SCHOLL, *S. J. C.*

By John W. Ullrich, *D. S.*

Executed December 7, 1908 on Joseph Selligman, by delivering to him a copy of the within summons.

CHAS L. SCHOLL, *S. J. C.*

By Hite W. LaVielle, *D. S.*

Executed December 7, 1908 on Holland L. Anderson, Revenue Agent for the Commonwealth of Kentucky, by delivering to M. J. Holt, Attorney for Holland L. Ander-

son, a copy of the within summons. See acceptance endorsed hereon and made a part of this return.

CHAS L. SCHOLL, S. J. C.

By Hite W. LaVielle, D. S.

Executed December 7, 1908, on Commonwealth of Kentucky by delivering a copy of the within summons to M. J. Holt. See acceptance endorsed hereon and made a part of this return.

CHAS L. SCHOLL, S. J. C.

By Hite W. LaVielle, D. S.

Summons to Jefferson County for Commonwealth of Kentucky.

Holland L. Anderson, Revenue Agent for the Commonwealth of Kentucky served.

JOSEPH SELLIGMAN,

*County Attorney, Jefferson County, Kentucky.*

The appearance of Commonwealth of Kentucky and Holland L. Anderson, Revenue Agent, are hereby entered. This 7th day of December, 1908.

M. J. HOLT,

*Atty. for Plaintiff and for Anderson, Rev. Agt.*

At a Court held on the 2nd day of January, 1909:

This action was set at rules by plaintiff or appellee on the 28th day of December, 1908:

By consent of parties, it is ordered that this case be transferred to Chancery Branch, First Division of this Court; that it be consolidated with action No. 53446 and that they be assigned to January 14, 1909, for hearing with leave to both parties to take proof.

At a Court held on the 7th day of January, 1909:

By agreement ordered that the testimony to be taken in this action in Jefferson County shall be taken by Alonzo Walker the official stenographic reporter of this Court upon notice to counsel of record and this case is now referred to him for that purpose.

Said reporter shall take testimony in shorthand and cause a full and accurate transcript of same to be made and filed among the papers of this case and when so filed said testimony shall constitute a part of the record in this case and shall be read in evidence herein; and when attested by the Judge before whom the trial is had, said testimony may be taken without being copied to the Kentucky Court of Appeals, to be used upon any appeal from any judgment that may be rendered in this case, and said transcript shall thereafter be returned to this Court.

At a Court held on the 14th day of January, 1909:

By agreement of parties, by consent, it is ordered that this action be and it is hereby consolidated under action 53444 and set for this day for hearing.

Thereupon came the parties by counsel, and this action having been fully heard and the Court being advised, ordered that it be and is submitted.

Thereupon on the 8th day of March, 1909, the following stipulation was filed in the Clerk's office.

### JEFFERSON CIRCUIT COURT.

#### CHANCERY BRANCH, FIRST DIVISION.

COMMONWEALTH OF KENTUCKY, ON RELATION

OF HOLLAND L. ANDERSON, ETC., - - - *Plaintiff,*

*vs.*

STIPULATION.

SOUTHERN PACIFIC COMPANY, - - - *Defendant.*

It is agreed that in copying this record for the Court of Appeals there may be omitted the deposition and exhibits of William Mahl and the opinion of the court, it being understood that the said deposition, exhibits, and opinion are contained in the record of the Commonwealth of Kentucky, by etc., vs. Southern Pacific Company, No. 45770 on appeal from the Jefferson Circuit Court, and are referred to and treated the same as if copied herein.

M. J. HOLT,

*Attorney for Plaintiff.*

HUMPHREY, DAVIE & HUMPHREY,

*Attorneys for Defendant.*

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STATE OF KENTUCKY,        }  
COUNTY OF JEFFERSON.    }Set.

I, W. L. Weller, Jr., Clerk of the Jefferson Circuit Court, in and for the County and State aforesaid, do hereby certify that the foregoing pages is a full, true and complete transcript of the record and proceedings in the cases wherein Commonwealth of Kentucky, by etc., are plaintiffs and The Southern Pacific Company, is defendant, Nos. 53444 and 53446 (consolidated actions under No. 53444) actions lately pending in the aforesaid Court, Chancery Branch, First Division, as the same appears of record and now on file in my said office.

Witness my hand, as aforesaid, this 8th day of March, 1909.

W. L. WELLER, JR.,

*Clerk of the Jefferson Circuit Court.*

By LEWIS MERIWETHER,

*Deputy Clerk.*

APPENDIX.  
JEFFERSON CIRCUIT COURT.  
Chancery Branch, First Division.

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COMMONWEALTH OF KENTUCKY, BY ETC., - *Plaintiff,*  
*vs.* Nos. 53,444 and 53,446.  
SOUTHERN PACIFIC COMPANY, - - - *Defendant.*

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The testimony in this case coming on to be taken before me on the 9th day of January, 1909, at the office of Messrs. Humphrey, Davie & Humphrey, in the Louisville Trust Company Building in Louisville, Kentucky, pursuant to an Order of Reference heretofore duly entered herein, the defendant proceeded to introduce its testimony as follows:

C. W. Jungen, called in behalf of the defendant, being duly sworn and examined by Judge Humphrey, testified as follows:

1. Q. Mr. Jungen, will you please state your residence and occupation?

A. My residence is New York City, and I am the manager of the Southern Pacific Company's Atlantic Coast Steamship Lines.

2. Q. How long have you been in the management of these lines?

A. Going on five years, beginning the fifth year now.

3. Q. Will you please state to the Notary the distinction between license, enrollment, and register of steamship lines?

Objected to by counsel for plaintiff.

A. They are defined by statute. If you wish me to define them, I will to the best of my ability.

4. Q. Well, go ahead.

A. A license is a document issued by the Government, in which is stated the name of the owner, the master who commands the ship, certain details—her dimensions, her tonnage, and the number of officers and crew that the vessel is required to carry; and her enrollment is a document which specifies that the vessel is in coastwise service; whereas a register is a document authorizing the vessel to ply in foreign trade, American vessels.

5. Q. Referring now to the years 1906 and 1907, take the Steamer Chalmette, state what was her enrollment for those two years?

A. The Steamship Chalmette prior to 1906 and 1907 was owned by the Morgan Louisiana, Texas & Railroad Steamship Company, and was chartered by the Southern Pacific Company from that corporation, paying charter hire for the same when actually in operation, not laid up; after that date she was bought from the Morgan Louisiana, Texas & Railroad Steamship Company by the Southern Pacific Company and was enrolled in New York.

6. Q. What was the date of the building of the Chalmette?

A. The Chalmette was built in 1879.

7. Q. What was the original cost?

A. The original cost of the Chalmette was \$255,000.00.

8. Q. Between what ports did the Chalmette ply in the years 1906 and 1907?

A. Part of the time she was on the Havana Route, that is, between New Orleans and Havana; and part of the time between New Orleans and New York.

9. Q. Now, ~~what~~ what was the gross tonnage of the Chalmette?

A. The gross tonnage of the Chalmette was 2,982 tons.

10. Q. What was her length and beam?

A. 321 feet long, and 42 feet 2-inch beam.

11. Q. What depth of water is required for her to navigate?

A. She will draw a maximum draft when loaded of about twenty-two feet.

12. Q. Well, how much more water does it require than this draft?

A. Well, in order that vessels may steer properly and be handled properly, she must have at least two feet under bottom; even at that they do not steer at their best.

13. Q. Where is the Chalmette repaired when she needs repairing?

A. In New York.

14. Q. Where was she laid up during these years, when laid up?

A. When laid up she was laid up in New York, except during the period of the spring of 1908 she was laid up for a period of three months in New Orleans, because she happened to be at that end of the line when we drew her off.

15. Q. Now, take the Excelsior, where was she enrolled during the years 1906 and 1907?

A. The Excelsior was likewise owned by the Morgan Louisiana, Texas & Railroad Steamship Company, and the same remarks apply to her as regards to the transfer or purchase of her by the Southern Pacific Company.

16. Q. Well, where was she enrolled during the years 1906 and 1907?

A. During the years 1906 and 1907, prior to that time she was enrolled in New Orleans, as the Chalmette was likewise.

17. Q. But during the years 1906 and 1907 where was she enrolled?

A. I don't exactly know the date of the purchase of those ships by the Southern Pacific Company, but it was about sometime during the year 1906, sometime during that year, I can't remember the date when they were purchased, but they were not enrolled in New York until that purchase was made.

18. Q. Now, from the time of this purchase where was the Excelsior enrolled?

A. In New York.

19. Q. And continued to be since that time?

A. Since that time she has been enrolled in New York. I will modify that to this extent: the Excelsior is now and has been for the past year operating on the Havana Line, and in that case she was required to surrender her enrollment at the port of New Orleans and obtain a Register, an exchange for her enrollment.

20. Q. Where was she registered?

A. That register is in New Orleans.

21. Q. While she is on this New Orleans and Havana Line?

A. Yes, sir; should I take her from this route she would surrender her register and receive her original enrollment papers.

22. Q. Now, when was the Excelsior built?

A. The Excelsior was built in 1882.

23. Q. And what did she cost?

A. She cost \$362,553.00.

24. Q. Between what ports did the Excelsior ply in the years 1906 and 1907?

A. Principally between New Orleans and Havana; she was operated a short time between New York and New Orleans.

25. Q. Now, what is her gross tonnage?

A. Her gross tonnage is 3,263.

26. Q. What is her length and her beam?

A. 340 feet, and 42½ feet beam.

27. Q. What is her draft?

A. Twenty-two feet.

28. Q. By that you mean that she touches bottom?

A. Touches bottom at twenty-two feet—loaded, of course.

29. Q. Where was the Excelsior repaired during the years 1906 and 1907?

A. New York.

30. Q. Where was she laid up when not in service?

A. She wasn't laid up at any time except possibly for a period of two or three weeks for what you would call general and extraordinary repairs, which are made in New York.

31. Q. Now, take the El Dorado, during the years 1906 and 1907—during the years 1906 and 1907 where was her enrollment?

A. In New York.

32. Q. What was the date that she was built?

A. The El Dorado was built in 1884.

33. Q. And what did she cost?

A. She cost \$358,892.00, leaving out the cents, I don't remember that.

34. Q. Between what ports did the El Dorado ply in the years 1906 and 1907?

A. Between New York and New Orleans, and sometimes between New York and Galveston. I might preface my statement in regard to the operation of the rest of these ships, that they are sometimes operated in one line or the other, according to the exigencies of the service. Sometimes, for instance, a ship that is regularly operated in the Galveston Line would perhaps require some repairs more extensive than would enable her to go out on her regular trip, and one of the other ships would be substituted from the other line, and after she was repaired she would probably go in the other line from which the other ship was taken. All the ships are freight vessels,

and are shifted from one line to another as the service requires, between New York to New Orleans Line and New York to Galveston Line. I except from that statement the Chalmette, the Excelsior, the Comus, the Proteus, the Antilles, the Momus, and the Creole, which are ships that carry freight and passengers; the last five named running between New York and New Orleans. Alternately the Chalmette and Excelsior are the ships that are operated on the Havana Line when we operate ships there.

35. Q. What is the gross tonnage of the El Dorado?

A. Her gross tonnage is 3,531.

36. Q. What is her length and her beam?

A. 351 feet, and 42 feet 6-inch beam.

37. Q. What is her draft?

A. 22 feet.

38. Q. Where during the years 1906 and 1907 was the El Dorado repaired?

A. In New York.

39. Q. And where was she laid up when not in service?

A. In New York.

40. Q. Now, take the El Paso, will you give her enrollment during the years 1906 and 1907?

A. New York.

41. Q. What was the date when she was built?

A. 1884.

42. Q. What was her cost?

A. Her cost was \$358,971.00.

43. Q. Between what ports did the El Paso ply in the years 1906 and 1907?

A. Sometimes between New York and New Orleans, and sometimes between New York and Galveston.

44. Q. What was her gross tonnage?

A. Her gross tonnage was 3,531 tons.

45. Q. What is her length and what is her beam?

A. 351 feet in length, and  $42\frac{1}{2}$  feet in beam, and draws 22 feet of water, when loaded.

46. Q. Where was she repaired during that period?

A. In New York.

47. Q. And where was she laid up when not in service?

A. In New York.

48. Q. Now, take the Steamer El Monte, during the years 1906 and 1907 where was she enrolled?

A. New York.

49. Q. What was the date of her building?

A. 1886.

50. Q. What was her cost?

A. Her cost was \$360,109.00.

51. Q. Between what ports did she ply between those years?

A. At times between New York and New Orleans, and also between New York and Galveston.

52. Q. Gross tonnage?

A. 3,531, 351 feet long, and  $42\frac{1}{2}$  feet beam, draws 22 feet of water.

53. Q. Where repaired?

A. New York.

54. Q. And where laid up when not in service?

A. In New York.

55. Q. Now, take the Steamer El Mar, where was her enrollment during the years 1906 and 1907?

A. New York.

56. Q. What was the date she was built?

A. She was built in 1889.

57. Q. What was her cost?

A. Her cost was \$391,371.00.

58. Q. Between what ports did she ply during those years?

A. At times between New York and New Orleans, and also between New York and Galveston.

59. Q. Gross tonnage?

A. 3,531, length 351, beam 42½.

60. Q. Draft?

A. 22 feet.

61. Q. Where repaired?

A. New York.

62. Q. And where laid up when not in service?

A. New York.

63. Q. Take the El Norte, where was she enrolled during the years 1906 and 1907?

A. New York.

64. Q. What was the date of her building?

A. She was built in 1899.

65. Q. What was her cost?

A. Her cost was \$515,015.00.

66. Q. Between what ports did she ply in the years 1906 and 1907?

A. Principally between New York and Galveston, occasionally between New York and New Orleans.

67. Q. Gross tonnage?

A. 4,665.

68. Q. Length?

A. Her length is 406.

69. Q. Beam?

A. 48¼.

70. Q. Draft?

A. Draft 24.

71. Q. Where repaired?

A. New York.

72. Q. And laid up when not in service?

A. In New York.

73. Q. Take the El Rio, where was she enrolled in 1906 and 1907?

A. In New York.

74. Q. What was the date when she was built?

A. 1899.

75. Q. Cost?

A. Same cost as the El Norte, \$515,015.00.

76. Q. Between what ports did she ply in 1906 and 1907?

A. Between New York and Galveston principally, occasionally between New York and New Orleans.

77. Q. Gross tonnage?

A. Gross tonnage of the El Rio, 4,665.

78. Q. Length?

A. 406.

79. Q. Beam?

A. 48 feet 3 inches.

80. Q. Draft?

A. 24 feet.

81. Q. Where repaired?

A. New York.

82. Q. And where laid up when not in service?

A. New York.

83. Q. Take the El Cid, where was she enrolled during the years 1906 and 1907?

A. New York.

84. Q. What was the date of her building?

A. 1899.

85. Q. Between what ports did she ply during the years 1906 and 1907?

A. Principally between New York and Galveston, occasionally between New York and New Orleans.

86. Q. What was her cost?

A. \$515,015.00.

87. Q. Gross tonnage?

A. Gross tonnage 4,608.

88. Q. Length and beam?

A. 406 feet, beam 48 feet and 3 inches.

89. Draft?

A. 24 feet.

90. Q. Where was she repaired?

A. New York.

91. Q. And where was she laid up when not in service?

A. New York.

92. Q. Now, take the El Sud, where was she enrolled during the years 1906 and 1907?

A. New York.

93. Q. What was the date that she was built?

A. 1899.

94. Q. Cost?

A. \$515,015.00.

95. Q. Between what ports did she ply in 1906 and 1907?

A. Principally New York to Galveston, occasionally between New York and New Orleans.

96. Q. Gross tonnage?

A. 4,572.

97. Q. Length?

A. 406.

98. Q. Beam?

A. 48 feet 3 inches.

99. Q. Draft?

A. Draft 24 feet.

100. Q. Where repaired?

A. Repaired in New York.

101. Q. And where laid up when not in service?

A. New York.

102. Q. Now, take the Comus, where was she enrolled during the years 1906 and 1907?

A. New York.

103. Q. What was the date of her building?

A. The date of her building was 1900.

104. Q. What did she cost?

A. \$546,018.00.

105. Q. Between what ports did she ply in 1906 and 1907?

A. Between New York and New Orleans exclusively.

106. Q. What was her gross tonnage?

A. 4,828.

107. Q. Length and beam?

A. 406 feet, and 48 feet and 3 inches beam.

108. Q. Draft?

A. Draft 24 feet.

109. Q. Where was she repaired?

A. New York.

110. Q. And where was she laid up when not in service?

A. In New York; she was a passenger and freight ship.

111. Q. Now, take the Proteus, where was she enrolled during the years 1906 and 1907?

A. New York.

112. Q. What was the date of her building?

A. 1900.

113. Q. What was her cost?

A. \$546,018.00.

114. Q. Between what ports did she ply in those years?

A. Exclusively between New York and New Orleans.

115. Q. Gross tonnage?

A. 4,836.

116. Q. What is her length and beam?

A. 406 feet, 48 feet and 3 inches.

117. Q. What is her draft?

A. 24 feet.

118. Q. Where was she repaired?

A. She was repaired in New York.

119. Q. And where was she laid up when not in service?

A. In New York.

120. Q. Is she a passenger and freight ship, or simply a freight ship?

A. Passenger and freight.

121. Q. Take the El Valle, where was she enrolled in the years 1906 and 1907?

A. New York.

122. Q. What was the date of her building?

A. 1901.

123. Q. Cost?

A. Her cost was \$556,261.00.

124. Q. Between what ports did she ply in 1906 and 1907?

A. Principally between New York and Galveston; occasionally between New York and New Orleans.

125. Q. Gross tonnage?

A. 4,605.

126. Q. Length and beam?

A. 406 length, 48 feet and 3 inches beam, and 24 draft.

127. Q. Where was she repaired?

A. New York.

128. Q. Where was she laid up when not in service?

A. New York.

129. Q. Was she a passenger or freight ship?

A. Freight ship.

130. Q. Take the El Dia, where was she enrolled during the years 1906 and 1907?

A. New York.

131. Q. What was the date of her building?

A. 1901.

132. Q. Cost?

A. Her cost was \$556,261.00.

133. Q. Between what ports did she ply in 1906 and 1907?

A. Principally between New York and Galveston; occasionally between New York and New Orleans.

134. Q. What was her gross tonnage?

A. 4,613.

135. Q. And her length?

A. Her length was 406.

136. Q. Beam?  
A. Her beam was 48 feet and 3 inches.
137. Q. And draft?  
A. Draft was 24 feet.
138. Q. Where was she repaired when repaired?  
A. In New York.
139. Q. And where laid up when not in service?  
A. In New York.
140. Q. Is she a freight or passenger ship?  
A. Freight ship.
141. Q. Take the El Siglo, where was she enrolled in the years 1906 and 1907?  
A. New York.
142. Q. What was the date of her building?  
A. 1901.
143. Q. What was her cost?  
A. Her cost was \$557,176.00.
144. Q. Between what ports did she ply?  
A. Principally between New York and Galveston; occasionally between New York and New Orleans.
145. Q. What was her gross tonnage?  
A. 4,616.
146. Q. Length?  
A. 406.
147. Q. Beam?  
A. 48 feet and 3 inches.
148. Q. Her draft?  
A. Twenty-four feet.
149. Q. Where repaired?  
A. New York.
150. Q. And where laid up when not in service?  
A. New York.
151. Q. Was she a freight or passenger?  
A. Freight ship exclusively.
152. Q. Take the El Alba, where was she enrolled in the years 1906 and 1907?

A. New York.

153. Q. What was the date of her building?

A. 1901.

154. Q. What was her cost?

A. Her cost was \$556,801.00.

155. Q. Between what ports did she ply in 1906 and 1907?

A. Principally between New York and Galveston; occasionally between New York and New Orleans.

156. Q. Her gross tonnage?

A. 4,614; her length is 406 feet; her beam is 48 feet and 3 inches; and her draft is 24 feet.

157. Q. Where was she repaired?

A. New York.

158. Q. And where was she laid up when not in service?

A. New York.

159. Q. Is she a freight or passenger?

A. Freight ship exclusively.

160. Q. Now, take the El Amigo, where was she enrolled in the years 1906 and 1907?

A. The El Amigo is a dock boat, she was enrolled in New York.

161. Q. What was the date of her building?

A. 1900.

162. Q. What is her cost?

A. Her cost was \$37,101.00.

163. Q. In what service was she in the years 1906 and 1907?

A. In the harbor of New York.

164. Q. Does she tow any vessels other than those of the Southern Pacific Company?

A. She does not, except in the case of disaster or emergency; she is for the exclusive use of shifting our ships from one dock to another, and also for towing barges and lighters which we own.

165. Q. What is her gross tonnage?

A. 150 tons.

166. Q. What is her length and beam?

A. She is 102 feet long 22 feet beam.

167. Q. What is her draft?

A. And she draws about twelve feet of water.

168. Q. Where is she repaired?

A. New York.

169. Q. And where is she laid up?

A. In New York when we have any time to lay her up.

170. Q. Do I understand you, this is a tug boat that is used exclusively in the harbor of New York?

A. Yes, sir; never goes out of the harbor limits.

171. Q. Now, take the Momus, where was she enrolled in 1906 and 1907?

A. In 1906 and 1907 she was enrolled in New York.

172. Q. What was the date of her building?

A. She was built in 1905, that is to say, she was laid down in 1905 but she went into commission in December, 1906.

173. Q. By going into commission you mean going into service?

A. Service—yes.

174. Q. What was her cost?

A. Her cost was \$1,040,000.00.

175. Q. And between what ports did she ply in 1906 and 1907?

A. She plied for a period of three months between New York and Havana.

176. Q. What three months is that, do you know?

A. That was January, February, and March of 1907.

177. Q. During the rest of the year where did she ply?

A. Between New York and New Orleans.

178. Q. What is her gross tonnage?

A. Her gross tonnage is 6,931.

179. Q. What is her length and beam?

A. 448, and 53 feet and 2 inches beam.

180. Q. What is her draft?

A. Her draft is 26 feet.

181. Q. Where was she repaired?

A. In New York.

182. Q. Where was she laid up when not in service?

A. In New York.

183. Q. Is she a freight or passenger ship?

A. Freight and passenger.

184. Q. What about the Antilles, where was she enrolled in the years 1906 and 1907?

A. She was enrolled in 1906 and 1907—she wasn't in commission and wasn't received until 1907, she was enrolled in New York.

185. Q. What was her cost?

A. Her cost was \$1,043,845.00.

186. Q. Will you state when she was put in commission by the Southern Pacific Company?

A. In the month of May, the date I don't exactly remember, 1907.

187. Q. Between what ports did she ply?

A. Between New York and New Orleans.

188. Q. What is her gross tonnage?

A. 6,878.

189. Q. Length and beam?

A. 440 feet length, 53 feet and 2 inches beam.

190. Q. Draft?

A. 27 foot draft.

191. Q. Where is she repaired?

A. New York.

192. Q. Where is she laid up when not in service?

A. New York.

193. Q. Going back to the Momus a moment, when was the Momus received by the Southern Pacific Company?

A. In the month of November, 1906.

194. Q. Who built her?

A. William Cramp Sons Ship & Engine Building Company, I believe is the name of the company, of Philadelphia.

195. Q. Now, take the Creole, where was she enrolled during the years 1906 and 1907—is she a tug or a ship?

A. She is a ship, she wasn't enrolled until 1907, about June, 1907.

196. Q. Where was she enrolled?

A. In New York.

197. Q. What was the date of her building?

A. 1907.

198. Q. When was she received by the Southern Pacific Company?

A. That same date, June, 1907.

199. Q. What was her cost?

A. \$1,018,198.00.

200. Q. Between what ports did she ply in the year 1907 after she was received?

A. Between New York and New Orleans exclusively.

201. Q. What is her gross tonnage?

A. Her gross tonnage is 6,378.

202. Q. And her length?

A. 440.

203. Q. Beam?

A. 53 feet and 2 inches.

204. Q. Draft?

A. Twenty-seven feet.

205. Q. Where was she repaired?

A. In New York.

206. Q. And where was she laid up when not in service?

A. New York.

207. Q. Now, take the tug Confidence, where was her enrollment in 1906 and 1907?

A. In New York.

208. Q. What was the date of her acquisition by the Southern Pacific Company?

A. The date of her acquisition by the Southern Pacific Company was in December, 1905, I think that is the right date, I am pretty sure it is.

209. Q. She has twenty-eight barges attendant on her, has she?

A. Well, I would not put it just that way; I should say that she with twenty-eight barges was purchased by the Southern Pacific Company in 1905, December.

210. Q. What did it cost?

A. \$250,250.00.

211. Q. Now, will you please state where that tug and those barges are used?

A. They are used exclusively in the harbor of New York, within the harbor limits, for transporting and transferring freight, and bringing to our ships freight—transferring from our ships to other ships at other docks freight that the ships carry.

212. Q. And transferring from other ships to your ships?

A. And sometimes for that.

213. Q. This tug and these barges, as I understand, are exclusively used in the harbor limits of New York?

A. They are, exclusively.

214. Q. And is there repaired and there laid up when not in use?

A. Yes, sir.

215. Q. Now, take the tug El Chico, when was she received by the Southern Pacific Company?

A. In 1907.

216. Q. In March, 1907?

A. Yes.

217. Q. What did she cost?

A. \$50,358.00.

218. Q. Where is she enrolled and where is she used?

A. Enrolled in New York and used in the harbor of New York exclusively for assisting in shifting ships from one dock to another, and doing such towing work as our company requires.

219. Q. Is the same true as to the tug El Toro?

A. Yes.

220. Q. And it was received at the same time by the Southern Pacific Company, and cost \$69,882.94?

A. Correct.

221. Q. And is used in the same way that the Chico is?

A. Yes.

222. Q. Now, take the barge El Toro, she was acquired, I believe, by the Southern Pacific Company in June, 1904, at a cost of \$15,184.54?

A. Yes.

223. Q. Where was she used during the years 1906 and 1907?

A. In the harbor of Galveston.

224. Q. For what purpose?

A. For discharging heavy weights from our ships; she is what is known as a derrick barge.

225. Q. What has become of her?

A. She has been condemned because of her age and unsafety. I would add that while she was received by the Southern Pacific Company in 1904, she was about fifteen years old when the Southern Pacific Company acquired her.

226. Q. And she has been condemned?

A. She has been condemned.

227. Q. And she was used in the harbor of Galveston as the other barges you have spoken of were used in the harbor of New York?

A. Yes, sir.

228. Q. Now, take the barge Cyclops, that was acquired by the Southern Pacific Company, I believe, in June, 1907?

A. Yes, sir.

229. Q. At a cost of \$27,500.00?

A. Yes, sir.

230. Q. The barge Penates, in May, 1907, at a cost of \$9,050.00, and the barge Minerva in April, 1907, at a cost of \$9,600.00?

A. Correct.

231. Q. Now, will you please state where, during the rest of the year 1907 those barges were used?

A. In the harbor of New York.

232. Q. And not taken out of that harbor?

A. Never out of the harbor.

233. Q. And used for the same purpose as the other barges you have described?

A. Exactly, except the Cyclops, she was used as a derrick barge for hoisting heavy weights.

234. Q. Now, how many docks has the Southern Pacific Company in the City of New York?

Counsel for the plaintiff objects to the question as incompetent and immaterial.

A. Four.

235. Q. Hired from the City of New York?

A. Yes, sir; leased.

236. Q. Does the Southern Pacific Company have the exclusive use of those four docks?

A. Yes, sir.

237. Q. Now, Mr. Jungen, have you looked at the exhibit filed with the deposition of Mr. Mahl, marked "117—Exhibit No. 17," in which Mr. Mahl undertakes to show the fair cash value of the various ships and barges belonging to the Southern Pacific Company as of June 30, 1906, and June 30, 1907, it being stipulated in this case that these values were practically the same

on September 1, 1906, and September 1, 1907; and will you please state whether, in your judgment, Mr. Mahl has adopted a fair rule for the ascertainment of the value of those ships, taking their age, service, and cost?

A. I think he has not only adopted a fair one, but I think a very liberal one.

238. Q. That is to say, you think the values are liberally large?

A. I do.

239. Q. According to the rule that he has used, they are—

A. According to the rule he has used, they are liberally large.

CROSS-EXAMINED BY MR. M. J. HOLT.

240. Q. Please file with your deposition as a part thereof a copy of the memorandum of steamships and other floating equipment owned by the Southern Pacific Company, showing their original cost, etc., and marked "Exhibit No. 17," with William Mahl's deposition.

A. I do so.

241. Q. You state that you have control of the operation and general supervision as manager of the steamships, tugs, and barges of the Southern Pacific Company in their Atlantic—

A. Atlantic Coast Steamship Lines; by the Atlantic Coast Steamship Lines I mean the lines operated between New York and New Orleans, between New York and Galveston, and perhaps not properly considered a coastwise line, it is so near to it we call our Havana line a coastwise line.

242. Q. What steamships or steamship lines have they in other waters besides the Atlantic and the Gulf?

A. None that I have anything to do with.

243. Q. Well, have they any that you have nothing to do with?

A. None that I know of, and can speak authoritatively on.

244. Q. Haven't they steamships in the Pacific Coast trade?

A. The Southern Pacific Company?

245. Q. Yes.

A. I am not aware that they have; the only thing that I know that they have in the Pacific is, and that is from knowledge dating back years ago, are ferry lines.

246. Q. The Southern Pacific Company have some ferry lines at New Orleans, haven't they?

A. I believe so, they have a transfer line that carries trains over there.

247. Q. That operates from New Orleans to Algiers?

A. No, I would not state definitely; I know they have transfer boats there, I haven't anything to do with that.

248. Q. Those transfer boats are not included in this list at all?

A. No, sir; I have nothing to do with that.

249. Q. And they are operated in the Mississippi River in and around New Orleans?

A. I only know from observation, I know nothing about their operation or have nothing to do with the control of them.

250. Q. You know they have some transfer or ferry boats there, don't you?

A. I believe that is published knowledge—public knowledge.

251. Q. Please state the fair cash value of the tug El Amigo on September 1, 1906, and on September 1, 1907?

A. According to Mr. Mahl's statement he has given it here—I could not sell it for that to save my life—\$25,562.00.

252. Q. Was she or was she not worth that figure on September 1, 1906, and September 1, 1907?

A. Well, based on what she is worth to us—yes; I guess she is worth that much to us because we could not replace her.

253. Q. You consider that—

A. But her age and her service that she has rendered, I would consider myself fortunate, if I wanted to sell her, if I could get \$25,000.00 for her.

254. Q. Now, the steamship Momus, you say that was built in 1905?

A. Well, she was laid down.

255. Q. What do you mean by the term “laid down?”

A. By “laid down,” they lay the keel of a ship, that is called laying down a ship; her keel was laid down in 1905.

256. Q. When was she built and ready for service, but not turned over to the Southern Pacific Company?

A. She was turned over to the Southern Pacific Company within twenty-four hours after she was completed.

257. Q. When was she paid for by the Southern Pacific Company?

A. She was paid for on an installment basis as she was being built, on a ten per cent basis; when she was ten per cent completed, the first payment was made on her; when twenty per cent was completed the second payment was made on her and so on until she had made her trial run there was one payment left due on her, that payment was not made; there was some extra work done on her which involved some adjustment of bills, but it was fully six months, I guess, before the final adjustment was made.

258. Q. When was the trial made of the Momus?

A. On her way around from Philadelphia.

259. Q. I say, on what date?

A. I think it was the 23d or 24th of November, 1907.

260. Q. 1906, you mean?

A. 1906—yes.

261. Q. Wasn't that vessel practically completed, so far as the building was concerned, on September 1, 1906?

A. No, sir.

262. Q. What was yet to be done on it?

A. Well, there was a lot of work to be done on her, I can't remember all these details. She was inspected and not ready for acceptance because she was not completed, there was some work on her boilers, there were leaks found in her boiler that had to be remedied, and there was a lot of unfinished joiner work; in fact, we brought around with us a number of joiners and ship fitters; the smoking room was not completed when we received her, and they worked on her for several days at New York.

263. Q. That is practically a new ship?

A. Yes.

264. Q. And she was worth her cost price, was she not, on—

A. Well, she was worth her cost price—yes.

265. Q. On September 1, 1906, what per centage of that ship was completed?

A. I could not tell you that.

266. Q. As much as eighty per cent?

A. Yes, probably ninety.

267. Q. Now, the steamship Antilles, that was turned over to you in May, 1907?

A. In May, 1907—yes, sir.

268. Q. What per cent of that ship was completed on September 1, 1906?

A. September 1, 1906, I should say about sixty-five per cent.

269. Q. On September 1, 1907 that vessel was practically worth her cost price, was she not?

A. Practically—yes.

270. Q. Now, the steamship Creole, she was turned over to you in June, 1907?

A. Yes.

271. Q. What per cent of her was finished on September 1, 1906?

A. Well, that is a pretty hard thing to say, because she was an experimental ship; she was delivered to us in 1907 and supposed to have been, at that time, ninety percent completed; she made a trial run which proved to be an absolute failure and she was turned back to the builders' hands to make good certain defects that existed. She was out of commission; she made one trip in July.

272. Q. 1907?

A. 1907, one trip, went back to the builders, was there from the 9th of August until the 22nd of December, and on the 28th of December of that year she made her second trip.

273. Q. Now, the tug El Chico?

A. I would say furthermore that she has again been in the builders' hands this year; she was operated very unsuccessfully until June when she was laid off and we declined to operate her again because of the difficulties we had with the ship, and we turned her back to the builder and she was in the builder's yards from the 21st day of August until November.

274. Q. Now, with the exception of the steamship Creole, all of these ships, tugs, and barges during the years 1906 and 1907 were in active service, were they not, and not often laid up?

A. Practically—yes, they were all in operation and only laid off for such period as I say, three weeks at a time, to make certain necessary, general repairs; such repairs as we call general and extraordinary repairs or repairs that can not be done while a ship is on its regular service.

275. Q. And all these steamships, barges, and tugs were practically in actual service during the years 1906 and 1907?

A. Yes, with the exceptions I have stated.

276. Q. And some of these ships were not laid up as much as two weeks during a period of two years?

A. Oh, yes, each ship was laid off every year two or three weeks, depending on the character of the work to be done.

277. Q. Some of these ships occasionally are laid off in New Orleans, Galveston, and Havana for emergency repairs and things of that sort?

A. Not laid off at all, sir.

278. Q. Those repairs are done right in the water?

A. What we call running repairs, but I do not permit any repairs done away from New York except what I call emergency repairs, repairs that can be done while a ship is in port on her schedule.

279. Q. Then the only time that those ships were laid off, tugs or barges, was this couple of weeks each year for repairs in New York?

A. Well, I can't say a couple of weeks—two or three weeks.

280. Q. Now, the tug Confidence was acquired by the company in December, 1905?

A. Yes, sir.

281. Q. At a cost of \$250,000.00, that is, the tug and twenty-eight barges?

A. Yes, sir.

282. Q. Was the tug and those barges new at that time?

A. No, sir; they were not.

283. Q. What was the worth of the tug Confidence and the twenty-eight barges on September 1, 1906 and on September 1, 1907, in your judgment, and not according to Mr. Mahl's judgment?

A. Well, they were old barges and an old tug, and the depreciation of old equipment is much larger than that of new equipment; an old thing will depreciate more

rapidly than a new thing, and they haven't been kept in the best condition by the original owners; we were forced to buy because conditions arose, and we therefore paid more. The appraised value of that outfit at that time was \$233,000.00, that was the appraised value of it at the time we bought it, that was the appraised value.

284. Q. What were they worth on the dates I have named; were they worth less than—

A. They were worth less, I don't think they were worth what I paid for them by \$25,000.00.

285. Q. Now, the tug El Chico you acquired in March, 1907.

A. Yes.

286. Q. Was that a new tug?

A. Yes, a new tug.

287. Q. Well then, on September 1, 1907 it was worth about the price that you have fixed?

A. Well, not according to what would be the appraisal of her.

288. Q. Well, about what was she worth the 1st of September, 1907?

A. I should say she was worth about \$47,500.00.

289. Q. Now, as to the tug El Toro which you acquired at the same time; what was she worth on September 1, 1907?

A. She was worth about \$66,000.00.

290. Q. Now, the barge El Toro in the Galveston harbor where she was condemned, what was she worth on September 1, 1906 and September 1, 1907?

A. 1906 and 1907—well, I guess if I had wanted to sell her I could not get \$500.00 for her.

291. Q. She wasn't worth as much as a thousand dollars on those dates?

A. No, sir.

292. Q. Now, the barge Cyclops, what was she worth on September 1, 1906 and September 1, 1907?

A. I think, my recollection is that we paid \$27,500.00 for her; I should say she was worth about \$25,000.00.

293. Q. When did you acquire her, I have forgotten that date?

A. We got her in June, 1907—you asked me what her value was in 1907?

294. Q. September 1, 1907?

A. Well, that would only be a depreciation of a few months, I should say about \$26,000.00; she had depreciated in value about a thousand dollars, I should say.

295. Q. The barge Penates, when did you acquire her?

A. In May, 1907.

296. Q. What was she worth on September 1, 1907?

A. About what I paid for her.

297. Q. The barge Minerva, when did you acquire her?

A. April, 1907; that is, their cost value down here, that is their cost value as near as I can remember.

298. Q. The tug Confidence, the twenty-eight barges, the barges Cyclops, Penates and Minerva, and the tug El Amigo, you say were used exclusively in the New York harbor?

A. Exclusively.

299. Q. How far did the tug and these barges go from the shore line?

A. Shore line of what?

300. Q. Of the harbor?

A. Well, the harbor limits of New York are between Norton's Point and Sandy Hook, that is a distance approximately from our docks of fifteen miles; the shores, the widest part of the Bay in New York—the upper Bay is the widest part except what they call the Raridon Bay,—I should say the farthest distance that those vessels ever went from shore was from a mile to a mile and a half; that is, they could not get from the shore any greater distance than that, by going in the middle of the harbor.

301. Q. Did they ever go outside of the harbor?

A. I have sent one of the tugs out on one occasion to get some sea water—fresh sea water; it went out as far as Scotland Light Ship, which is twenty-eight miles from our pier.

302. Q. The Southern Pacific Company still owns all these vessels, tugs, and barges that you have mentioned in your deposition?

A. Yes, sir.

303. Q. And the same general conditions still prevail in reference to these steamships, tugs, and barges, that prevailed on September 1, 1906 and September 1, 1907?

A. Yes, sir.

304. Q. And it is practically the same except for a deterioration for the years used?

A. Yes, sir.

305. Q. What do you estimate the deterioration for a year's use of a steamship, boat, or barge—what per cent?

A. Five per cent depreciation.

306. Q. Please state which ships, steamboats, and barges were purchased by the Southern Pacific Company from the Morgan Louisiana Texas & Railroad Steamship Company?

A. Steamship Chalmette and Steamship Excelsior.

307. Q. Most of these steamships, tugs, and barges were built for the Southern Pacific Company?

A. They were, to the best of my knowledge and belief.

RE-DIRECT EXAMINATION BY JUDGE HUMPHREY.

308. Q. Now, the Steamer Momus, the Steamer Antilles, and the Steamer Creole were all built for the Southern Pacific Company at Cramp's Ship Yard near Philadelphia, weren't they?

A. The Momus and Antilles were; the Creole was built by the Fore River Ship Building Company at Quincy, Massachusetts.

309. Q. And from the time that the keel is laid down up to the time that the vessel takes her trial trip, she remains, of course, at the ship yard?

A. She does.

310. Q. How long after the trial trip is it until she is delivered to the purchaser?

A. Usually, if satisfactory, if she is considered satisfactory after inspection, she is delivered to the port, or according to what is named in the contract—to any wharf that the owners may indicate, if so specified in the contract, as was in this case.

311. Q. Now, where were the Momus, Antilles, and the Creole to be delivered by the ship builders?

A. To be delivered in New York at any place designated by the Southern Pacific Company or its representative, which was myself.

312. Q. Now, when was the Momus delivered to the Southern Pacific Company in New York?

A. In November, 1906.

313. Q. By the Cramps?

A. By the Cramps Ship Building Company.

314. Q. And the Antilles in May, 1907?

A. Yes.

315. Q. And the Creole in June, 1907?

A. Yes, sir. I might add as a matter of interest, to indicate that the builders are considered as owning the ship until she is actually delivered, they always fly their house flag, and not the owner's house flag, when they are making a delivery.

316. Q. Making their trial trip on the river?

A. Yes; the owner's house flag don't go up until it is delivered; the builder's flag flies on the ship until she is delivered to the purchaser or owner. I want to call

your attention to the fact that the builder's flag is hoisted on the ship until she is delivered to the purchaser, and his flag—the owner's flag is not allowed to fly until she is accepted and delivered; the builders maintain the ship is theirs until accepted by the owner—purchaser.

RE-CROSS EXAMINED BY MR. M. J. HOLT.

317. Q. And under your contract of purchase, what per cent of the purchase price has been paid?

A. When she was brought to the dock?

318. Q. Yes?

A. Eighty per cent; but when she was delivered to the dock the other ten per cent was called for on delivery.

RE-DIRECT EXAMINATION BY JUDGE HUMPHREY.

319. Q. Now Mr. Jungen, in regard to these transfer lines that Mr. Holt has asked you about in the harbor of New Orleans, do you know whether they are owned and operated by the Southern Pacific Company or by the Morgan Louisiana & Texas Railroad & Steamship Company?

A. I don't know it except from hearsay and observation, I don't know anything about their operation. I think—now, I am only telling this—I think that they are operated by the Morgan Louisiana & Texas Railroad & Steamship Company, but who they belong to—

320. Q. You don't know?

A. I don't know.

321. Q. You have nothing to do with them yourself?

A. I have nothing to do with them myself except this far, when they consider building a transfer boat, either Mr. Thornwell Fry, who is the President of the Morgan Louisiana & Texas Railroad & Steamship Company, or Mr. — ask my advice and opinion in regard to building a transfer boat for that service in the Mississippi River.

## RE-CROSS EXAMINED BY MR. M. J. HOLT.

322. Q. And you give that advice as part of your employment?

A. Not as part of my employment, I give my advice because of my being an expert man on it. I have been a seafaring man for a long time, been in it twenty years, and have been in the United States Navy, and I consider myself as competent to give a little expert opinion on it.

STATE OF KENTUCKY, }  
JEFFERSON COUNTY. } SS.

I, Alonzo Walker, the Official Stenographer of the Jefferson Circuit Court, Chancery Branch, First Division, do certify that the foregoing deposition of C. W. Jungen was taken pursuant to agreement of counsel and pursuant to an Order of Reference heretofore duly entered herein, before me, at the time and place and in the action mentioned in the caption; that said witness was first duly sworn by me that the testimony he should give in said action should be the truth, the whole truth, and nothing but the truth; that said deposition was first taken in shorthand by me, and a full, true, and accurate transcript of same afterwards made by me; that the reading of said deposition to said witness and his signature to same were waived by counsel; that Mr. M. J. Holt appeared for the plaintiff, Judge A. P. Humphrey appearing for the defendant.

Witness my hand this 12th day of January, 1909.

ALONZO WALKER,  
*Official Stenographer.*

Attest:

SHACKELFORD MILLER,  
*Judge.*

Endorsed on back:

Jany 14th, 1909.  
Depos. for Defendant.  
Rec'd from Alonzo Walker  
O. S., before who  
taken and filed.

Attest:

W. L. WELLER, JR.,  
*Clerk.*

By R. KALTENBACHER,  
*Deputy Clerk.*

## SOUTHERN PACIFIC COMPANY.

Memo. or steamships and other Floating Equipment owned, their original cost, and present worth respectively on September 15, 1901, 1902, 1903, and September 1, 1904, 1905, and June 30, 1906, and 1907, based on depreciation of 5 per cent per annum until depreciation to the amount of 60 per cent has been absorbed, leaving as the present worth of a ship 40 per cent of its original cost.

## PRESENT WORTH.

Name of Ship.	Date placed in service.	Original cost of ships.	September 15, 1901.	September 15, 1902.	September 15, 1903.	September 1, 1904.	September 1, 1905.	June 30, 1906.	June 30, 1907.
S. S. Chalmette	Nov., 1879.	\$255,000.00	\$102,000.00	\$102,000.00	\$102,000.00	\$102,000.00	\$102,000.00	\$102,000.00	\$102,000.00
S. S. Excelsior	Nov., 1882.	362,553.00	145,021.20	145,021.20	145,021.00	145,021.00	145,021.00	145,021.00	145,021.00
S. S. El Dorado	1884.	358,892.97	143,557.19	143,557.19	143,557.19	143,557.19	143,557.19	143,557.19	143,557.19
S. S. El Paso	1884.	358,971.93	143,588.77	143,588.77	143,588.77	143,588.77	143,588.77	143,588.77	143,588.77
S. S. El Monte	1886.	360,109.14	158,493.68	150,569.00	144,043.75	144,043.75	144,043.75	144,043.45	144,043.45
S. S. El Mar	1889.	391,371.52	200,907.50	190,862.12	181,319.02	172,630.82	163,999.28	157,165.98	150,548.61
S. S. El Sud	July, 1889.	515,015.19	458,148.95	435,241.50	413,479.43	393,666.88	373,983.54	358,400.88	340,480.84
S. S. El Norte	Sept., 1889.	515,015.18	462,440.71	439,318.68	417,352.75	397,354.59	377,486.87	361,758.25	343,669.34
S. S. El Rio	Oct., 1899.	515,015.18	464,586.60	441,357.27	419,289.41	399,198.45	379,238.53	363,436.92	345,265.07
S. S. El Cid	Dec., 1899.	515,015.19	468,878.48	445,434.56	423,162.83	402,886.28	382,741.97	366,794.38	348,454.66
S. S. Comus	April, 1900.	546,018.85	506,204.97	480,849.72	456,849.98	434,959.25	413,211.29	395,994.15	376,195.41
S. S. Proteus	June, 1900.	546,018.85	510,755.14	485,217.38	460,956.50	438,869.02	416,925.57	399,553.67	379,575.99
S. S. El Valle	June, 1901.	556,261.72	548,149.58	520,742.10	494,705.00	470,998.10	447,448.20	428,804.55	407,364.32
S. S. El Dia	Sept., 1901.	556,261.73	528,448.64	502,026.21	477,970.78	454,072.24	435,152.57	413,394.94	392,614.77
S. S. El Siglo	Dec., 1901.	557,176.11	535,121.23	508,365.17	484,006.01	459,805.71	440,647.13	420,148.42	400,614.77
S. S. El Alba	Jan., 1902.	556,801.72	537,081.70	510,227.62	485,779.18	461,490.25	442,261.50	425,562.42	405,148.39
Tug El Amigo	April, 1900.	37,101.98	34,396.63	32,676.80	31,042.96	29,555.48	28,077.71	26,907.81	25,562.42
S. S. Momus	Nov., 1906.	1,040,087.99	---	---	---	---	---	---	1,003,418.39
S. S. Antilles	May, 1907.	1,043,845.51	---	---	---	---	---	---	1,035,046.80
S. S. Creole	June, 1907.	1,018,198.92	---	---	---	---	---	---	1,013,956.42
Tug Confidence and 28 barges	Dec., 1905.	250,250.00	---	---	---	---	---	242,951.03	230,803.48
Tug El Chico	March, 1907.	50,358.13	---	---	---	---	---	---	49,518.81
Tug El Toro	March, 1907.	69,882.94	---	---	---	---	---	---	68,718.23
Barge El Toro	June, 1904.	15,184.54	---	---	14,994.74	14,245.00	---	13,532.75	12,856.11
Barge Cyclops	June, 1907.	27,500.00	---	---	---	---	---	---	27,385.42
Barge Fenates	May, 1907.	9,050.00	---	---	---	---	---	---	8,974.58
Barge Minerva	April, 1907.	9,600.00	---	---	---	---	---	---	9,480.00
Total	-----	\$11,036,558.29	\$4,347,129.40	\$5,757,132.86	\$5,496,987.60	\$5,281,080.29	\$5,050,936.87	\$5,111,571.98	\$8,115,643.47

STATEMENT SHOWING DESCRIPTION AND VALUE OF  
THE VARIOUS SHIPS.

Name.	Gross ton- nage.	Lgth.	Feet. Beam.	Dpth.	Build.	Age in Yrs.	Where Built.
El Dorado ---	3,531	351	42.6	31.	1884	24	Wm. Cramps.
El Monte ----	3,531	351	42.6	31.	1886	22	Wm. Cramps.
El Paso -----	3,531	351	42.6	31.	1884	24	Wm. Cramps.
El Mar -----	3,531	351	42.6	31.	1889	19	Wm. Cramps.
El Sud -----	4,572	406	48.3	33.8	1899	9	Newport News.
El Norte ----	4,665	406	48.3	33.8	1899	9	Newport News.
El Rio -----	4,665	406	48.3	33.8	1899	9	Newport News.
El Cid -----	4,608	406	48.3	33.8	1899	9	Newport News.
El Valle -----	4,605	406	48.3	33.8	1901	7	Newport News.
El Dia -----	4,613	406	48.3	33.8	1901	7	Newport News.
El Siglo -----	4,616	406	48.3	33.8	1901	7	Newport News.
El Alba -----	4,614	406	48.3	33.8	1901	7	Newport News.
Comus -----	4,828	406	48.3	33.8	1900	8	Newport News.
Proteus -----	4,836	406	48.3	33.8	1900	8	Newport News.
Antilles -----	6,878	440	53.2	37.	1907	1	Wm. Cramps.
Momus -----	6,931	440	53.2	37.	1906	2	Wm. Cramps.
Creole -----	6,378	440	53.2	37.	1907	1	Fore River S. B. Co.
Chalmette ---	2,982	321	42.2	30.	1879	29	Wm. Cramps.
Excelsior ----	3,263	340	42.5	33.8	1882	26	Harlan & Hol. Corpo.

The deposition of William Mahl, with exhibits referred to therein, filed in order on page 79, is as follows:

### FRANKLIN CIRCUIT COURT.

COMMONWEALTH OF KENTUCKY, - - - - Plaintiff,

*Against*

SOUTHERN PACIFIC COMPANY, S. W. HAGER,

AUDITOR, H. M. BOSWORTH, TREASURER, H.

S. MCCHESENEY, SECRETARY, ETC., - - Defendants.

December 4, 1907.

Deposition of William Mahl, taken pursuant to the annexed notice and agreement as to the time hereto attached, to be read on behalf of the plaintiff, the Commonwealth of Kentucky, in an action now pending in the Franklin Circuit Court, Franklin County, Kentucky, wherein the Commonwealth of Kentucky is plaintiff, and the Southern Pacific Company, et al, are defendants.

Appearances: Commonwealth of Kentucky, by N. B. Hayes, Attorney General. Southern Pacific Company, by Alec P. Humphreys, Attorney for the Southern Pacific Company.

Neither S. W. Hager, H. M. Bosworth, nor H. S. McChesney were represented by counsel, or appeared in person.

The witness, William Mahl, being duly sworn testifies as follows:

#### DIRECT EXAMINATION BY GENERAL HAYES.

1. Q. State your age, your residence, and what official position, if any, you hold in the Southern Pacific Co.

A. I am 63 years of age; I reside in New York City. My official position is that of Comptroller of the Southern Pacific Co.

2. Q. State the kind of business in which the Southern Pacific Co. was engaged in each of the years ending September 15, 1901, 1902, and 1903.

A. It was engaged in the operation of a system of transportation lines.

3. Q. State the kind of business in which the Southern Pacific Co. was engaged in each of the years ending September 1, 1904, 1905, 1906, and 1907.

A. It was engaged in the operation of a system of transportation lines.

4. Q. State the number of shares of capital stock, common and preferred, of the Southern Pacific Co. as of the dates September 15, 1901, 1902, and 1903.

A. In 1901 there was common only, 1,978,477 88-100 shares. In 1902 there was common only, 1,978,492 27-100 shares. In 1903, 1,978,492 58-100 shares.

5. Q. State the number of shares of capital stock, common and preferred, of the Southern Pacific Co. as of the dates September 1, 1904, 1905, 1906, and 1907.

A. In 1904, common only, 1,978,492 58-100 shares. In 1905, common, 1,978,492 58-100 shares, preferred 395,633.

6. Q. In 1906?

A. The reports were required to be made as of June 30th.

7. Q. Then state as of June 30th.

A. Common, 1,978,492 58-100 shares. Preferred, 395,679. June 30, 1907, common, 1,978,492 58-100 shares. Preferred, 395,697 shares.

8. Q. State the par value of each share of said capital stock owned by the Southern Pacific Co. as of the dates September 15, 1901, 1902, and 1903.

A. Par value \$100 per share.

9. Q. State the par value of each share of said capital stock as of the dates September 1, 1904, 1905, 1906, and 1907.

A. Common stock, par value \$100 per share.

10. Q. State the par value of the preferred stock in 1905, 1906, and 1907.

A. The par value was \$100 per share.

11. Q. State the real or market value of the common stock on September 15, 1901, 1902, and 1903, and on September 1, 1904, estimated at the highest price at which it sold during each of said years.

A. 1901, 63 $\frac{5}{8}$ . 1902, 81 $\frac{1}{4}$ . 1903, 76 $\frac{1}{2}$ . 1904, 59.

12. Q. State the same in regard to the years 1905, 1906, and 1907.

A. 1905, 72.37 per share. 1906, 72.87 per share. 1907, 97.50 per share.

13. Q. State the real or market value of the preferred stock, estimated at the highest price at which it sold during the years ending on each of said dates, September 1, 1905, June 30, 1906, and 1907.

A. 1905, 121.12 per share. June 30, 1906, 122.25, June 30, 1907, 120.38.

14. Q. State the amount of surplus and undivided profits of the Southern Pacific Co. on September 15, 1901, 1902, 1903, September 1, 1904, and 1905, and June 30, 1906, and 1907.

A. 1901, \$18,321.32 surplus, undivided profits \$18,321.32. September 15, 1902, surplus none, undivided profits none. September 15, 1903, surplus none, undivided profits none. September 1, 1904, surplus none, undivided profits none. September 1, 1905, surplus none, undivided profits none. June 30, 1906, there is a bookkeeping surplus of \$784,041.73 but this amount has been advanced by the company to its subsidiary companies in meeting their deficiencies in operation, and for other purposes. The undivided profits stand in precisely the same position as the surplus, and are synonymous terms. June 30, 1907, there is a bookkeeping surplus of \$4,858,975.66 but this amount has been advanced by the company to its subsidiary companies in meeting their deficiencies in operation, and for other purposes. In stating

the amount of undivided profits and surplus, there is but one amount which is designated under two different titles.

15. Q. State what other assets the Southern Pacific Co. had on September 15, 1901, 1902, and 1903, and on September 1, 1904, and 1905, and on June 30, 1906, and 1907, and what was the value of each of said assets on said dates.

A. Schedules of the Company's assets were filed with the reports made respectfully to the Auditor of Public Accounts as of September 15, 1901, 1902, and 1903, and as of September 1, 1904, and 1905, and as of June 30, 1906, and 1907.

16. Q. I hand you reports made and compiled by the Southern Pacific Co. and filed in the office of the Auditor of Public Accounts for Kentucky, and of date September 15, 1901, September 15, 1902, September 15, 1903 September 1, 1904, September 1, 1905, and I ask you to examine them in connection with Exhibits A, B, C, D, and E, filed in the above styled action, and identified by such letters as such exhibits and state whether or not such exhibits are true and correct copies of the reports made by the said company to said auditor, on September 15, 1901, September 15, 1902, September 15, 1903, September 1, 1904, September 1, 1905?

A. They are.

17. Q. I see by the reports made on September 15, 1901, Exhibit B attached to said report, that the said company received in dividends on stock owned by said company on said date, \$173,706.50. Will you please state and give the serials of stock from which said dividends were derived?

Adjournment taken until two o'clock.

Met pursuant to adjournment at two o'clock.

A. I will have a statement prepared and file it as Exhibit 1. Part of the dividends was received from stocks of the Wells, Fargo Express Co. owned by the Southern Pacific Co. which was received in consideration for express facilities granted by the said Southern Pacific Co. and its lines. I will file herewith a statement showing the amount of such dividends and the stocks upon which they were received, and mark it Exhibit 1 for identification.

18. Q. I see also from said report and said Exhibit B that the said company received interest on bonds owned by it on said debts, amounting to \$368,980. Will you please give the serial numbers, and the bonds upon which this interest was received, and name the bonds owned by said company on said dates?

A. A statement showing the interest and the bonds upon which it was received, and which were at that time owned by the Southern Pacific Co. is filed as Exhibit 2. This interest has been collected upon the bonds of the subsidiary companies, received in payment for advances for construction, and for other corporate purposes.

19. Q. However, the bonds and stocks referred to in the last two questions belonged to the Southern Pacific Co. did they not?

A. They did.

20. Q. Will you please explain the transaction in which the item is given in said report and Exhibit B, as \$15,537.69 profits on bonds sold, and state who sold and negotiated the said bonds referred to.

A. The subsidiary companies pay the Southern Pacific Co. for the advances made by it for construction and extension of lines, for the purchase of equipment, or other additions to their property, from the proceeds of bonds which they sell to the Southern Pacific Co. at a price then agreed upon. At some subsequent period these bonds are sold by the Southern Pacific Co. to furnish it with funds to carry on its operations. At times

there is a profit between the selling price to the Southern Pacific Co. and the selling price by it to the public. At times there is a loss. This year it chanced that there was a profit.

21. Q. Then, if I understand your answer, you say that the Southern Pacific Co. receives or purchases from its subsidiary companies, bonds of the other companies, and thereafter the said Southern Pacific Co. sells and negotiates such bonds, and the profit named in this question is the difference between the price paid by the Southern Pacific Co. and the price at which the bonds are sold by it.

A. It is. The Southern Pacific Co. is compelled to take these bonds of the subsidiary companies, because in many instances there is no market for them, and they can not be sold. The Southern Pacific Co. borrows money to be advanced to the corporations in carrying on their work and holds the bonds until such time as there is a market for them, when they can sell them and reimburse themselves. Sometimes there is a profit, and sometimes not.

22. Q. Then, Mr. Mahl, in this transaction the Southern Pacific Co. was not engaged in anything other than the purchase and sale of said bonds, was it not?

A. I do not know what you would call it. It was only reimbursing itself for the advances it had made.

23. Q. I see from said report, 1901, and Exhibit B, that the Southern Pacific Co. received that year \$111,732.05 as profit on stock sold. Will you please file an itemized statement showing what stocks were sold, and explain this transaction of the Southern Pacific Co.

A. I am sorry I can not do that, General. The books for that year were kept in San Francisco, and subsequently transferred to New York. The books transferred give no details of the transaction. As all the correspondence and statements showing the details of the transaction were destroyed in the San Francisco fire,

I am unable to state whether this profit from stocks sold was profit from oil developments, or other character. The Company was at that time engaged in developing oil wells for the purpose of furnishing fuel for its locomotives. It kept an account of the expenses of developing these wells, and sold the oil to itself for fuel for its locomotives, at an arbitrary price, possibly thrice or quadruple its cost, and in that manner built up a profit account which enters into the item of \$111,732.05.

24. Q. You may state whether or not the Southern Pacific Co. was in the year 1901 engaged in the oil business.

A. Only for obtaining fuel for the use of its locomotives.

25. Q. Do you mean to state that the Southern Pacific Co. sold oil to itself, or to its subsidiary companies in said year?

A. No. The Southern Pacific Co. developed oil wells for the purpose of obtaining oil for its locomotives.

26. Q. Then this transaction was simply a transaction between the Southern Pacific Co. itself, was it not?

A. Purely a bookkeeping transaction.

27. Q. Was any of the oil spoken of used by the subsidiary companies?

A. Not that I know of.

28. Q. Mr. Mahl, will you please explain how a transaction by the Southern Pacific Co. with itself, derived a profit of \$111,732.05?

A. The oil was taken over by the Southern Pacific Co. in its accounts at an arbitrary price. I will assume say 60 cents per barrel, and an account credited called "Oil well developments." As that oil was used by the locomotives of the various Companies which the Southern Pacific Co. leased, the oil was charged out at the price at which it was taken over. The difference between the price at which the oil was arbitrarily taken

over, and what it cost to develop these oil wells is this profit. The Company could have fixed a market price equal to the cost of developing the oil wells, and the result would have been substantially the same. There would have been no profit from the oil wells, but the saving would have been reflected in the lease-hold profits. It is entirely a bookkeeping account, and there was no cash realized in the transaction.

29. Q. Mr. Mahl, if I understand you, the Southern Pacific Co. engaged in the year 1901 in the development of oil fuel.

A. Yes.

30. Q. And the oil produced was used by the subsidiary companies controlled by the Southern Pacific Co. and the difference between what the production of the oil cost, and the amount charged the subsidiary companies, constitutes this profit of \$111,732.05. Is that correct or not?

A. It is not.

31. Q. Explain wherein it is not correct.

A. The Southern Pacific Co. does not sell to any of its subsidiary Companies anything required in the operation of the leased railways. It buys supplies, material, fuel and everything needed to operate the railroads leased to it. At the end of the year there is an accounting of the receipts and expenses, under the provisions of the leases, and distribution of the profits, as provided in such leases.

32. Q. You will please name the different lines of railroad operated by the Southern Pacific Co. under lease, and the lines in which the Southern Pacific Co. owns a majority of the stock, and determines the policy of said companies thereby, and which together form the subsidiary Companies operated by the Southern Pacific Co.

A. I file herewith a schedule marked Exhibit 3, showing the mileage of the lines belonging to the Companies

whose capital stocks are principally owned by the Southern Pacific Co. and which are operated by the Southern Pacific Co. under leases to it, and the mileage of lines whose capital stocks are principally owned by the Southern Pacific Co. but which are operated by the Companies owning the lines.

33. Q. Going back to the profit on stocks sold in 1901, and the oil developments referred to, I will ask you to state if this oil was not used by these subsidiary Companies, and not by the Southern Pacific Co.?

A. It was not. I consider that everything used by the locomotives on the lines operated by the Southern Pacific Co. was owned by the Southern Pacific Co. and not by the subsidiary Companies.

34. Q. By the terms of the leases of the lines operated by the Southern Pacific Co. under lease, I ask you to state if there is not an accounting annually between the Southern Pacific Co. and each of said leased lines?

A. There is.

35. Q. In that accounting, I will ask you to state whether or not in 1901, these Companies accounted to the Southern Pacific Co. for the oil consumed on the respective lines?

A. They did not. The accounting is by the lessee to the lesser, as to what was done with the properties leased.

36. Q. You may state whether or not W. W. Cotton is an officer or attorney of the Southern Pacific Co.

A. I could not affirm or deny, because I do not know. He may or may not be.

37. Q. I ask you to state whether or not you are acquainted with the terms and provisions of the lease of the Oregon & California R. R. Co. to the Southern Pacific Co. of date August 1, 1885, for 34 years, at a yearly rental of \$5,000.

A. I have some recollection of it.

38. Q. Have you a copy of said lease in your office?

A. I may have.

39. Q. Will you please file as a part of your deposition a copy of said lease, and mark it Exhibit 4 for identification?

A. I will.

40. Q. Is there an accounting between the Southern Pacific Co. and the Oregon & California R. R. Co. annually, according to the terms and provisions of the lease referred to?

A. There is.

41. Q. Then, if any of the oil referred to was used in the operation of these lines of railroad, did not the Oregon & California R. R. Co. account to the Southern Pacific Co. therefor?

A. No, it did not.

42. Q. Please explain why not?

A. In the case of the Oregon & California R. R. Co. they did not use oil fuel. They did not use any of this oil.

43. Q. I also see from said report, 1901, Exhibit B, that the Southern Pacific Co. received \$966,799.52, interest collected from the United States of America on transportation accounts. Please explain this transaction, and state whether or not this money was received by the Southern Pacific Co. from the Federal Government.

A. I do not recall the transaction now. I will have to look it up and ascertain. I believe it was interest collected on claims running back possibly 15 or 18 years, under the Central Pacific lease to the Southern Pacific Co.

44. Q. But the Southern Pacific Co. did receive this amount in that year, did it not?

A. It did.

45. Q. I also see from said report and Exhibit B, that the Southern Pacific Co. received \$4,669.29, proceeds from the sale or lease of lands. You may state whether or not this amount was received from the sale

of lands owned by the Southern Pacific Co. or lands owned by it leased, in said year?

A. I will have to refer to the books. I can not say from memory now.

46. Q. Will you please file an itemized statement showing from what source the Southern Pacific Co. received the said \$4 669.29?

A. I will file it and mark it Exhibit 5, for identification.

47. Q. You may state the total amount of indebtedness of the Southern Pacific Co. as principal, and not for any of its subsidiary Companies, and not as security or liability for any of the subsidiary Companies, on September 15, 1901, 1902, and 1903, and on September 1, 1904, 1905, and on June 30, 1906, and 1907.

A. The total indebtedness on September 15, 1901 was \$67,747,207.74. On September 15, 1902, \$65,384,122.-55. On September 15, 1903, \$90,574,087.86. On September 1, 1904, \$121,360,243.98. On September 1, 1905, \$132,556,720.26. On June 30, 1906, \$116,190,539.98, and on June 30, 1907, \$151,764,921.51.

48. Q. Will you please state the rate of interest paid on said indebtedness for each of said years.

A. The only fixed rate of interest is on its bonded indebtedness. This is relatively 6%, 4½%, and 4% per annum for the years September 15, 1901, September 15, 1902, September 15, 1903, September 1, 1904, September 1, 1905, on June 30, 1906, the rate was 6% and 4% respectively, and the same for the year ending June 30, 1907.

49. Q. Will you please state whether or not the Southern Pacific Co. has any other indebtedness as principal. If so, give the amount, and the rate of interest paid thereon?

A. There is no fixed rate of interest on any other except the interest on the bonded indebtedness hereinbefore referred to. There is an interest account between

it and the subsidiary Companies, but this rate of interest varies according to the price of money, and there are considerable current expenses which do not carry interest.

50. Q. Mr. Mahl, will you please state the gross earnings or receipts of the Southern Pacific Co. for the respective years ending on September 15, 1901, 1902 and 1903, September 1, 1904, and 1905, and on June 30, 1906, and 1907?

A. For the year ending September 15, 1901, \$62,-567,402.32. September 15, 1902, \$62,978,874.76. September 15, 1903, \$65,470,828.87. September 1, 1904, \$71,-252,901.33. September 1, 1905, \$78,094,933.04. June 30, 1906, \$87,955,595.97, and June 30, 1907, \$27,603,470.00. The diminution in the gross receipts for the year June 30, 1907, as compared with the gross receipts for former years, arises solely from change in the form in which the statement is made up. In former years there were shown as receipts the aggregate sum which the Southern Pacific Co. received from the operation of the leased lines, and as disbursements the aggregate sum which the Southern Pacific Co. expended in the operation of the leased lines. In the statement for the year 1907, the aggregate sum of the expenditures amounting to \$81,-914,088.50 was deducted from the aggregate of the receipts which amounted to \$83,656,999.88, so that the Southern Pacific Co.'s receipts started with a profit of \$1,742,911.38 from the operation of the leased lines.

51. Q. You will please now state the amounts which the Southern Pacific Co. advanced to the respective subsidiary Companies, for the purposes, betterment, equipment, improvement, buildings, or for anything that goes into the road in the way of new and permanent improvements, extensions, or construction, or materials to be used by them, for each of the years respectively named above referred to.

A. It will be impossible to make up such a statement, money has no ear-marks, and we can not identify the purpose for which it is used in the sum total of advances which the Southern Pacific Co. has made. Take as an illustration the Galveston, Harrisburg & San Antonio R. R., to which it has advanced over eight million dollars. It will be impossible to show how much of this is for construction, extension, betterments, or for deficiencies in operation when the company is unable to earn its fixed charges. The Southern Pacific Co. makes advances for all the purposes and needs of its subsidiary companies, whether it is for retiring maturing obligations, for construction, or the extension of new lines, for equipment or buildings, or for moneys required in other betterment, and in the operation of the lines.

52. Q. Then these various advances made are embraced in the report made to the Auditor of Public Accounts of Kentucky as the operating expenses of the various subsidiary roads?

A. No; they are not.

53. Q. Then will you please point out in the report that item which is embraced by the above question, for advancements for the betterment, whether it be in the improvement of the road, or equipment or extensions of their lines, or new materials furnished to said subsidiary companies?

A. A part of it, under the provisions of the leases, are included in the expenditures.

54. Q. You may state whether there is an account kept between the Southern Pacific Co. and the subsidiary companies, showing the operating expenses of said companies, exclusive of advances made in the betterment, improvements, buildings and extension of said lines, heretofore referred to.

A. There is an account kept between the Southern Pacific Co. and the subsidiary companies, according to the provisions of their leases. In some of the leases the

betterments are paid for out of the earnings. In some they are advanced, and carried into an open account with the subsidiary companies.

55. Q. Will you please file a statement of the account referred to above, as to the actual operating expenses of the said roads leased, and operated by the Southern Pacific Co. for each of the years named in this deposition?

A. I will as quickly as is practicable.

56. Q. Do I understand by that answer that you decline to furnish it?

A. No; I will furnish it as quickly as it can be prepared, and mark it Exhibit 6 for identification.

57. Q. Haven't you the several leases, or copies thereof of the several lines operated under lease by the Southern Pacific Co. in this, your New York office?

A. If I haven't, I can obtain them. I may have them.

58. Q. Will you please go and see whether or not you have such leases?

A. I will.

59. Q. Will you please file a copy of each of said leases as a part of this deposition, and mark them Exhibits 7, 8, 9, 10 and 11?

A. I will file such copies, and mark them Exhibits 7, 8, 9, 10 and 11 for identification.

59. Q. Please name the companies which are operated under their own organizations, or Board of Directors, and in which companies the Southern Pacific Co. owns a majority of the stock?

A. Direct Navigation Co., Galveston, Harrisburg & San Antonio R'y, Houston, East & West Texas R'y, Houston & Shreveport R. R., Houston & Texas Central R. R., Iberia & Vermilion Railroad, Louisiana Western Railroad, and Morgans' Louisiana & Texas Railroad and S. S. Texas & New Orleans R. R., Nevada & California R. R. This lease is pending, but it will be operated as a leased line.

60. Q. Each of these roads are controlled by a Board of Directors independently, or different from the Board of Directors of the Southern Pacific Co., are they not?

A. That is a matter of record.

61. Q. And each of said companies is a different corporation from that of the Southern Pacific Co., is it not?

A. It is.

62. Q. Each of the lines of railroad operated by the Southern Pacific Co. under lease also have a separate Board of Directors from that of the Southern Pacific Co., do they not?

A. They have.

63. Q. Then each of the leased lines of railroad is a separate and distinct corporation from the Southern Pacific Co., is it not?

A. It is.

64. Q. Does the Southern Pacific Co. own any line of railroad independent of any other company?

A. Not that I know of.

65. Q. Then, Mr. Mahl, is not the Southern Pacific Co. simply what is known as a "holding" company?

A. It is not. It is a transportation line. It was formed purely for the purpose of unifying the management of a transportation line from New York to San Francisco, and it was from its organization, operated as a unit by the Southern Pacific Co. as lessee. Later it was compelled by the acts of the Legislature of the State of Texas in 1887 or 1889 to abrogate the leases under which the lines in said State were operated.

66. Q. Will you please explain what you mean by the "Transportation Co." when the Southern Pacific Co. does not own individually any mile of railroad?

A. The Southern Pacific Co. bill of lading in New York will carry any freight shipped by its steamers to San Francisco on only one bill of lading. The shipper has to look only to that company for the safe delivery of freight, or any claim that may accrue out of its non-delivery.

67. Q. And yet it ships freight over the different railroad systems which it does not own, does it not?

A. It owns a majority of the stock.

68. Q. And controls the policy of the various systems of railroad entering into this by reason of said leases, and determines the policy of said roads by holding a majority of the stock, in each of the roads entering this system?

A. No; I do not think that is so. On the lines we lease we control only the freight which originates at the terminus or stations on the leased property. The lines which are operated by their own organizations naturally co-operate with the leased lines of the Southern Pacific Co. in order to secure business for their lines.

69. Q. By control of the freight business over this system, you mean the fixing of the transportation charges, do you not?

A. No; not that. I mean the securing of the freight. We have the steamship lines which secure the freight at this end, and the railway lines in California which secure the freight at that end, all of which necessarily passes over the lines in Texas and Louisiana.

70. Q. Where is the principal office of the Southern Pacific Co.?

A. It has one in Kentucky and one in New York.

71. Q. Which is regarded as the principal office by the subsidiary companies of said railroad system?

A. I don't know.

72. Q. Please state whether or not the Southern Pacific Co. in making reports to the various state Departments through which its leased lines are operated if it does not report Beechmont, Kentucky, as the principal office.

A. I don't know. It is a matter of record.

73. Q. Does the Southern Pacific Co. make annual report to the Secretary of the State of New York for assessment of its property, and if so, what does it report as its principal office?

A. It does not make any annual report.

74. Q. Does it report to any board of assessment for the assessment of its property in the State of New York?

A. It does not.

75. Q. Can you state whether or not the Southern Pacific Co. makes such a report to any department of the State Government of the State of California?

A. I believe it does. I will ascertain definitely to-morrow.

76. Q. Will you please state the par value of all the bonds, stocks, notes, choses in action, judgments, accounts, loans, and any other personal property which the Southern Pacific Co. owned on September 15, 1901, September 15, 1902, September 15, 1903, September 1, 1904, September 1, 1905, June 30, 1906, and June 30, 1907, respectively?

A. The par value of the stocks, bonds, and other property which the company owned at the times hereinbefore mentioned has been scheduled, and included in the reports made to the Auditor of Public Accounts, which has been filed herein by me as a part of my deposition.

Adjourned to December 5, 1907, at 10:30.

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Met pursuant to adjournment, December 5,  
1907, at 10:30.

77. Q. You may state whether or not either of the leased or proprietary lines operated under its own organization has extended its mileage since September 15, 1901, or during any of the years now in question. If so, did the Southern Pacific Co. furnish the funds necessary for such extensions? If so, how much?

A. Some of them have, and for all such extensions the Southern Pacific Co. advanced funds for the time be-

ing. All such work for the leased lines is done in the name of the Southern Pacific Co. and all expenditures are paid by it. Subsequently an account is made up against the lesser, and an accounting had in respect thereto.

78. Q. Can you make an estimate of such funds furnished to the leased lines for such extensions?

A. I can not. The funds are not advanced for a specific purpose, but as needed from time to time for all purposes. As mentioned in my former answer, money has no ear-marks, and can not be identified as to the particular purpose for which it is used.

79. Q. Does not the Southern Pacific Co. and each of said leased lines, or lines operated by their own organizations, have an accounting as between the two corporations.

A. They do.

80. Q. Would not that accounting show the extensions made, and the amount expended therefor?

A. No; would show only the amount of money advanced by the Southern Pacific Co. from time to time.

81. Q. Then you can not separate in the accounting between the Southern Pacific Co. and either of its lines or other lines the amount of money furnished by the Southern Pacific Co. for necessary expenses, and funds furnished for such extensions, if I understand you?

A. No; we can not tell how the funds advanced from time to time are specifically used.

82. Q. Does not the advance made by the Southern Pacific Co. show for what purpose it is intended to be used?

A. In a general way only. That is, it is assumed that if any of the leased lines are building extensions, or have built them, that the funds for which they call upon the Southern Pacific Co. for are in the main used for the account of such extensions. As to the precise amount thus used, this can not be ascertained. Again, the companies may have incurred a temporary indebtedness of

their own, in carrying on this work, and then call upon the Southern Pacific Co. to aid them in discharging this local indebtedness.

83. Q. Then such companies thereby become indebted to the Southern Pacific Co. to that extent?

A. For the amount of the advances.

84. Q. Can you separate the operating expenses of the respective leased lines, or lines operated under their own organizations, from the sums of money advanced by the Southern Pacific Co. to each of said lines for the betterment, improvement, equipment, extensions, buildings, or which otherwise was expended on said roads in the years from September 15, 1901, to June 30, 1907, as permanent improvements?

A. I can not.

85. Q. The Southern Pacific Co. has furnished, as I understand you, to each or some of said roads or lines, sums of money for their betterment, improvement, equipment or extensions, has it not?

A. It has furnished funds as needed. How they were applied is a matter which concerns the company that received the funds.

86. Q. Mr. Mahl, do you mean to state that the Southern Pacific Co. furnished sums of money to the leased lines, or lines operated under their own organizations, as requested, without knowledge as to what such funds were to be applied to?

A. Generally the Southern Pacific Co. knows the financial position of the company which is asking for funds. That is, it is informed of the amount which it has expended for extensions, new lines, betterments, etc., or any debts which it has incurred, and the purposes for which the debts were incurred, and from such statements advances funds accordingly.

87. Q. How long would it require you for the years in question to make up a statement of the funds furnished to these other lines during the years involved in this litigation?

A. I could not say just how long it would take. All of the books of the San Francisco corporation were destroyed in the fire. Everything was substantially wiped out up to that time.

88. Q. Have you duplicate accounts in this New York office of such transactions?

A. The corporate accounts of these subsidiary companies leased to the Southern Pacific Co. were kept in San Francisco. They were destroyed in the fire of April, 1906.

89. Q. Was either of the leased or proprietary lines operated under their own organizations incorporated under the laws of the Commonwealth of Kentucky?

A. Not that I know of.

90. Q. Does either of said leased lines do any business in the Commonwealth of Kentucky?

A. Not that I know of.

91. Q. Under what State or States were the leased lines incorporated, if you know?

A. I don't know.

92. Q. Was either of said leased or proprietary lines operated by the Southern Pacific Co. assessed for taxation for any one of the years included in this litigation by the Commonwealth of Kentucky?

A. I don't know positively, but I believe not.

93. Q. Has any one of said leased or other lines operated under this own organization, for any one of the years included in this litigation, as such a corporation paid any taxes to the Commonwealth of Kentucky?

A. Not that I know of.

94. Q. If the gross earnings of the Southern Pacific Co. be capitalized at 6% for the years ending September 15, 1901, 1902, and 1903, for the years ending September 1, 1904, and 1905, and for the years ending June 30, 1906, and 1907, state what that capitalization for each of said years would respectively be?

A. That is a matter of calculation. I will file a schedule showing the gross earnings capitalized at 6%

for the years ending September 15, 1901, 1902, and 1903, for the years ending September 1, 1904, and 1905, and for the years ending June 30, 1906, and 1907, and make the same a part of my deposition, and mark it Exhibit 12.

95. Q. If the net earnings of the Southern Pacific Co. be capitalized at 6% for the years ending September 15, 1901, 1902, and 1903, for the years ending September 1, 1904, and 1905, and for the years ending June 30, 1906, and 1907, state what that capitalization for each of said years would respectively be?

A. I will file a schedule showing the net earnings capitalized at 6%, and make the same a part of this deposition, and mark it Exhibit 13.

96. Q. Please give the gross earnings of the Southern Pacific Co. as an independent and separate corporation for each of the years involved in this litigation?

A. I will file a statement showing this information, and make the same a part of my deposition, and mark it Exhibit 14.

97. Q. Will you please give the net earnings of the Southern Pacific Co. as an independent and separate corporation for each of the years involved in this litigation?

A. I will prepare a statement, and file it as a part of my deposition, and mark it Exhibit 15.

98. Q. State the amount which the Southern Pacific Co. for each of the years involved in this litigation expended for operating the respective lines named above the income derived from such lines?

A. I do not know whether such a statement can be prepared. If it can be prepared, I will do so, and mark it Exhibit 16, and make it a part of this deposition.

99. Q. You stated on yesterday that the Southern Pacific Co. was in 1901 engaged in the development of oil wells. Please state where this business was conducted?

A. I do not know of my own knowledge where this business was conducted, and can only speak from the

statements received. These show that it was conducted in California.

100. Q. Under its charter the Southern Pacific Co. is authorized to purchase, grant, sell, or receive in trust or otherwise any kind of personal or real property. Please state whether or not the Southern Pacific Co. for any year or years involved in this litigation so purchased, granted, sold, or received in trust or otherwise any of such personal or real property. If it did, state what it was?

A. I do not know of any property which the Southern Pacific Co. purchased other than such properties as were needed in the operation and development of its transportation lines. The Southern Pacific Co. did purchase such property, but all such properties were for the account of, or incidental to the operation and development of the company's transportation lines.

101. Q. Was the title to such property or properties so purchased, vested in the Southern Pacific Co. or in the leased or other lines operated under their own organizations?

A. I do not know.

102. Q. Does the Southern Pacific Co. own such property now, or has it transferred the same to the lines named, and such companies are now indebted to the Southern Pacific Co. for the same?

A. If it has not transferred it to the lines concerned, it is simply holding it pending a settlement for such properties.

103. Q. Will you please state if it purchased personal property during the years involved in this litigation, whether or not the Southern Pacific Co. has transferred or delivered the same to the several lines or roads named in this litigation, and such roads now respectively owe the Southern Pacific Co. for such personal property?

A. The Southern Pacific Co. did purchase such property, and some of the companies still owe for it.

104. Q. I will ask you this question, if it is not a fact that each of the leased lines, or lines operated under their own organizations, do not maintain its separate corporate existence at this time, and during all the years involved.

A. They do.

105. Q. Then do these proprietary lines, I mean both leased and operated under their own organizations, lease from the Southern Pacific Co. or does the Southern Pacific Co. lease from them?

A. The companies lease equipment from the Southern Pacific Co.

106. Q. The lease from the lessor to the Southern Pacific Co. includes in it any equipment, rolling stock, and everything that belongs to the respective lines?

A. The equipment which the company possessed at the time the lease was made.

107. Q. Such equipment, rolling stock, betterments of the road, appurtenances, and apparatus which have been added since the lease, does that property belong to the leased lines or to the Southern Pacific Co?

A. It is the property of the propriety lines subject to any lease or lien thereon.

108. Q. Then the Southern Pacific Co. owns no equipment, rolling stock, cars, engines, or appurtenances of any of the roads other than the lien thereon which it retains for the purchase price thereon, and which have been added since the date of said leases?

A. The Southern Pacific Co. holds the title to the equipment which it has assigned or furnished to its proprietary or leased companies pending the payment for it.

109. Q. The Southern Pacific Co. is also authorized under its charter to acquire by purchase or otherwise bonds, stocks, obligations, and securities of any corporation, company, or association, and also any bonds, obligation, and securities of any government, State, territory, individual, or local authorities whatsoever. Will

you please state whether or not the Southern Pacific Co. has acquired by purchase or otherwise any of the obligations and securities named in any of the years in question?

A. The securities and properties purchased have been reported from time to time annually in the reports to the Auditor of Public Accounts of Kentucky.

110. Q. Then in each of said years the Southern Pacific Co. did purchase and hold and dispose of such obligations named in the last two questions, did it not?

A. It purchased the securities and properties hereinbefore referred to, for the development of its transportation lines. None of the securities and properties necessary to the transportation lines were to my knowledge disposed of.

111. Q. Do you state or mean to state in your answer to the last two questions, that the Southern Pacific Co. during the years embraced in this litigation, purchased no bonds, stocks, obligations, or securities of any other corporation, company, or association, Government, State, Territory, or individual, except stocks, bonds, and securities of the several leased lines, or lines operated under their own organizations?

A. It did not purchase any stocks, bonds, securities, etc., except such as were incidental to the operation of its lines, or necessary to the development of such transportation lines.

112. Q. During the years embraced in this litigation, from September 15, 1901 to June 30, 1907, did the Southern Pacific Co. purchase, sell, or negotiate any bonds, stocks, or obligations of any Company whatever other than the bonds and stocks representing the indebtedness or obligations of the other leased lines, or lines operated by their own organizations referred to in this litigation?

A. Not that I know of, except that during this period the Southern Pacific Co. has sold its own bonds and stocks.

113. Q. Do the several reports made by the Southern Pacific Co. to the Auditor of Public Accounts of Kentucky, fully disclose all the bonds and stocks of the several Companies and corporations owned by the Southern Pacific Co. in the respective years in which the said report was made.

A. They do.

114. Q. The Southern Pacific Co. is also authorized in addition to the powers named, to construct, establish, acquire, own, equip, lease, maintain, or operate any telegraph company or steamship line or lines. Will you please state whether or not the Southern Pacific Co. did construct, establish, acquire, own, equip, lease, maintain, or operate any such telegraph company or steamship line or lines for or during any of the years in question?

A. It has not constructed any telegraph lines, but owns and operates a line of steamships plying between New York and New Orleans and Galveston.

115. Q. You may state whether or not the Southern Pacific Co. owns a majority of the stock of any other steamship line than the one named in the last question.

A. It owns stock in the Pacific Mail Steamship Co. to the amount reported annually in the reports to the Auditor of Public Accounts.

116. Q. Is the amount so reported to the Auditor of Public Accounts, a majority of the stock of that Company?

A. A majority by five shares.

Adjournment taken until two o'clock.

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Met pursuant to adjournment at two o'clock.

117. Q. Please state the number of vessels, and the different kinds of vessels owned by the Southern Pacific Co. during the years embraced in this litigation, and the fair cash value of such vessels, estimated at the price they

4  
6  
7

would bring at a fair voluntary sale, during each of said years?

A. I submit in answer a statement showing the number of steamships, tugs, and barges owned by the Southern Pacific Co. and their estimated value as on September 15, 1901, 1902, and 1903, September 1, 1904, and 1905, and June 30, 1906, and 1907, and the method by which I arrived at said values.

118. Q. I ask you to file said statement, and make the same a part of your deposition, and mark it Exhibit 17.

A. I will so file and mark as Exhibit 17.

119. Q. The Southern Pacific Co. is required under its charter to keep an office for the transaction of business, a clerk or assistant clerk within the State of Kentucky. Please state where such office was located for each of the years named in this litigation, and who said clerk or assistant clerk was for each of said years?

A. Beechmont, Jefferson County, Kentucky. The clerk is J. B. Weaver.

120. Q. How many States or territories do the leased lines, or lines operated under their own organizations and embraced, as stated by you in the transportation Company, known as the Southern Pacific Co. pass through or into, or into which such lines extend?

A. The railroads traverse the States of Louisiana, Texas, New Mexico, Arizona, California, Oregon, Nevada, and Utah.

121. Q. Please state in how many, if any of such States and Territories the Southern Pacific Co. makes an annual report to the official thereof authorized to assess its property for taxation, independently, and as a separate corporation?

A. I do not know, but will ascertain.

122. Q. Will you please file as a part of this deposition, a copy of such or any report made by the South-

ern Pacific Co. to any of said States or Territories for the assessment of its properties?

A. I will make a copy of such reports, if any have been made, and mark them Exhibit 18.

123. Q. State whether or not the Southern Pacific Co. as an independent and separate corporation, has been assessed or paid the taxes in any or all of said States or Territories, for the years involved in this litigation?

A. I will have to ascertain. I do not recall whether it has or not.

124. Q. Then will you please file and mark as Exhibit 19, any assessment of the Southern Pacific Co. as a separate and independent corporation, for any of said years, and mark it a part of this deposition?

A. I will file such a statement and mark it Exhibit 19.

125. Q. What taxes and upon what species of property were the leased lines, or lines operated by their own organizations, required to pay, and did pay in the State of Louisiana, for the years involved in this litigation?

A. I am not an officer of the Louisiana Companies, and I do not know what taxes they have paid.

126. Q. Does any accounting between the Southern Pacific Co. and the lines operated by their own organizations, and embraced by what you have termed in this deposition the "Transportation Company," to wit: the Southern Pacific Co. show what taxes were paid for the years embraced in this litigation?

A. It does not.

127. Q. Then you do not know whether these lines have paid any taxes to the State of Louisiana or not?

A. Not to my knowledge.

128. Q. Do you know it from the records of the Southern Pacific Co.

A. No.

129. Q. You may state what taxes and upon what species of property, whether tangible or intangible, the

lines operated under their own organizations, and embraced in this litigation, have paid to the State of Texas during the years involved in this litigation.

A. I am not an officer of the Texas Companies, and do not know of my own knowledge.

130. Q. Will any account between the said Companies and the Southern Pacific Co. show what taxes they have paid if any, and the species of property upon which said taxes were paid, for the several years involved in this litigation?

A. It will not.

131. Q. Do you know from your own knowledge, or from the records of the Southern Pacific Co. what taxes have been paid by the lines embraced by what you have termed the "Transportation Company," in the State of Texas?

A. I do not know of my own knowledge.

132. Q. Will you state whether or not the leased lines, or operated under their own organizations, in the Territory of New Mexico, have paid any taxes, or been assessed for taxation by said Territory, for the years embraced in this litigation? If so, state the amount of such taxes, and the property that was assessed for taxation in said Territory?

A. I can not tell the property upon which taxes were assessed. Neither do I know of my own knowledge what taxes were paid, but the statement between the Southern Pacific Co. and the leased lines in the Territory of New Mexico show the aggregate amount the operating Company has paid.

133. Q. Will you file a statement and make it a part of this deposition, showing the aggregate amount for each of the years embraced in this litigation paid by said lines to the Territory of New Mexico, and in said statement show whether or not the property was tangible or intangible, for which said taxes were paid?

A. I can not give the kind of property, but I will file a statement showing the aggregate amount of taxes paid for the several years involved in this litigation, and mark it Exhibit 20.

134. Q. Please state for the years embraced in this litigation, the aggregate amount of the taxes assessed and paid by the leased lines or lines operated by their own organizations, in the Territory of Arizona, and will you file an itemized statement for the years embraced in this litigation, showing the amount so paid, and mark it Exhibit 21?

A. I will prepare such a statement, and file it and mark it Exhibit 21.

135. Q. Do you know whether or not these taxes were paid upon the tangible or intangible property of said Companies?

A. I do not know.

136. Q. Please state for the years embraced in this litigation the aggregate amount of the taxes assessed and paid by the leased lines, or lines operated by their own organizations, in the State of California, and will you file an itemized statement for the years embraced in this litigation, showing the amount so paid and mark it Exhibit 22?

A. I will prepare such a statement, and file it and mark it Exhibit 22.

137. Q. Do you know whether or not these taxes were paid upon the tangible or intangible property of said Companies?

A. I do not know.

138. Q. Please state for the years embraced in this litigation, the aggregate amount of the taxes assessed and paid by the leased lines, or lines operated by their own organizations, in the State of Oregon, and will you file an itemized statement for the years embraced in this litigation, showing the amount so paid, and mark it Exhibit 23?

A. I will prepare such a statement, and file it and mark it Exhibit 23.

139. Q. Do you know whether or not these taxes were paid upon the tangible or intangible property of said Companies?

A. I do not know.

140. Q. Please state for the years embraced in this litigation, the aggregate amount of the taxes assessed and paid by the leased lines, or lines operated by their own organizations, in the State of Nevada, and will you file an itemized statement for the years embraced in this litigation, showing the amount so paid, and mark it Exhibit 24?

A. I will prepare such a statement, and file it and mark it Exhibit 24.

141. Q. Do you know whether or not these taxes were paid upon the tangible or intangible property of said Companies?

A. I do not know.

142. Q. Please state for the years embraced in this litigation, the aggregate amount of the taxes assessed and paid by the leased lines, or lines operated by their own organizations, in the State of Utah, and will you file an itemized statement for the years embraced in this litigation, showing the amount so paid, and mark it Exhibit 25?

A. I will prepare such a statement, and file it and mark it Exhibit 25.

143. Q. Do you know whether or not these taxes were paid upon the tangible or intangible property of said Companies?

A. I do not know.

144. Q. State where the stocks, bonds, securities, and other obligations of indebtedness to the Southern Pacific Co. have been kept and held during the years embraced in this litigation?

A. In San Francisco, New York, and New Jersey.

145. Q. State whether or not the Southern Pacific Co. as an independent and separate corporation, has listed its stocks, bonds, securities, choses in action, judgments, moneys, and accounts owned by it, for taxation anywhere outside of the Commonwealth of Kentucky for the years embraced in this litigation?

A. I do not know.

146. Q. You may state whether or not the Southern Pacific Co. has listed its steamships and barges, set out in the Exhibit filed heretofore, with this deposition, for any or all of the years embraced in this litigation, anywhere other than the Commonwealth of Kentucky?

A. It has not.

147. Q. Has the Southern Pacific Co. paid taxes on said ships, barges, and tugs anywhere, unless it be in the Commonwealth of Kentucky, for any of the years involved in this litigation?

A. It has not.

148. Q. Have the said barges, ships, and tugs a home port other than the Commonwealth of Kentucky?

A. I do not know.

149. Q. Do you know whether or not the Southern Pacific Co. or the records of said company, show the home port of the vessels, tugs, and barges embraced in said Exhibit?

A. I do not know. None of the records in my possession show anything of that kind.

150. Q. You will please state if any of the barges, boats, and tugs, or all of the same, are registered at any particular port within the United States, as their home port, and if so, state where it is?

A. I believe they are all registered here in the port of New York. The registration papers about them are documents made out by the other officials of the Company, and I know nothing about them.

151. Q. Do the records of the Southern Pacific Co. show where the home port of such vessels is located?

A. I do not know.

152. Q. Will you please examine the records of the Southern Pacific Co. and if said ships, boats, and tugs have a home port other than Kentucky, at which they are registered, will you please make out a statement showing such port, and file it as a part of this deposition, and mark it Exhibit 26?

A. Yes. I will have to ask the proper official to furnish the information.

153. Q. Does the Southern Pacific Co. list its boats, ships, and tugs for taxation, and pay the same to either the City or State of New York?

A. It does not.

CROSS-EXAMINATION BY JUDGE HUMPHREY.

1. Q. Has any of this floating equipment of which General Hayes has been speaking, ever been nearer to the State of Kentucky than the Atlantic Seaboard or the Gulf of Mexico?

A. Not to my knowledge.

2. Q. How many employes had the Southern Pacific Co. in 1907?

A. 60,491.

3. Q. These are employed on the leased lines and the steamship lines?

A. They are.

4. Q. What is the number on the steamship lines?

A. About 3,700.

5. Q. And on the leased lines?

A. 56,791.

6. Q. These men, as I understand, are employed and paid by the Southern Pacific Co. direct?

A. They are.

7. Q. Will you please file as a part of this deposition an exhibit showing the highest and lowest price at

which the common and preferred stock of the Southern Pacific Co. sold for years prior to September 15, 1901, 1902, and 1903, September 1, 1904, and 1905, and June 30, 1906, and 1907, also showing according to the highest price or market value of the capital stock of the Company, what was its value according to the lowest price, and what was its value according to the fair price?

A. I will make up such a statement, and file it and mark it Exhibit 27.

8. Q. Will you please file a statement showing the value of the rolling stock of the Southern Pacific Co., the real estate of the Southern Pacific Co., and the materials and supplies suitable for the operation of the railroad belonging to the Southern Pacific Co. and the location of the leased lines for 1901, to 1907, inclusive?

A. I will have such a statement prepared, and file it and mark it Exhibit 28.

9. Q. In regard to this real estate, where is that situated, and how is it used?

A. The principal part is situated in San Francisco, and is used for freight depots, yards, and terminal facilities for the Southern Pacific Co. in California.

10. Q. Does the Southern Pacific Co. lease any piers in New York for the transaction of business?

A. Yes, it does.

11. Q. More than one?

A. Yes, four.

12. Q. Mr. Mahl, in answer to a question asked by General Hayes involving the disposition by the Southern Pacific Co. of stocks and securities, you stated that the Southern Pacific Co. during the period involved had not disposed of any securities necessary to the maintenance of the transportation system. It is a fact, is it not, that moneys were advanced by the Southern Pacific Co. to its proprietary lines used in Louisiana and Texas; that on occasions these lines have paid these advances by bonds issued upon their property, and it is a fact that the South-

the Southern Pacific Co. has from time to time disposed of the bonds thus obtained?

A. It has, to reimburse itself for advances made.

13. Q. Reports have been made by the Southern Pacific Co. to the Auditor of Public Accounts during this period, do they show each for itself the amount and character of the stocks, bonds, and securities owned by the Southern Pacific Co. on these various dates?

A. They do.

14. Q. And the Southern Pacific Co. bought no other stocks, bonds, and securities other than as so stated in said reports?

A. That is right.

15. Q. Each of these reports show the rolling stock owned by the Southern Pacific Co. at the time they were made, do they not?

A. They do.

16. Q. That rolling stock was actually owned by the Southern Pacific Co. at the dates of these reports?

A. It was.

17. Q. Is that the same rolling stock as appears in the statement I have asked you to file?

A. It is.

#### RE-DIRECT EXAMINATION BY GEN. HAYES.

1. Q. Mr. Mahl, in the lines operated under their own organizations, and which are embraced in what you term the "transportation line," and in which the Southern Pacific Co. owns a controlling interest in said roads, I will ask you to now state whether or not the Southern Pacific Co. purchased a majority of said stock at one time, or at different intervals of time?

A. With the exception of possibly some very small amounts, it was acquired all at one time, by exchange for its own stock.

2. Q. Then prior to the time of such purchase by the Southern Pacific Co. of the bonds and stocks and leases

referred to, said leases were operated independent of the Southern Pacific Co. system, were they not?

A. The stocks were acquired all at one time, and a lease made simultaneously covering all properties.

3. Q. Then was the Southern Pacific Co. dealing in stocks and bonds of lines of railroad which at the time it acquired these bonds it did not own or control as in this system?

A. I am not familiar with these transactions prior to the lease of 1885. I know only of matters which date from the lease of 1885, and the stocks exchanged for Southern Pacific Co. stock at the time, and the operations by the Southern Pacific Co. under the lease of 1885 of all the lines as a unit.

4. Q. Is the Pacific Mail Line of Steamers a part of the transportation system, which you designate as the Southern Pacific Co.?

A. It exchanges business with it.

5. Q. Do the records of the Southern Pacific Co. show whether or not the Pacific Mail Line of Steamers is a part of the system designated as the "Transportation Company"?

A. I do not know.

6. Q. When did the Southern Pacific Co. purchase the controlling interest in the bonds and stocks of the Pacific Mail Line referred to in this deposition?

A. Prior to 1901.

7. Q. Was the Southern Pacific Co. engaged in the business of a transportation company when it purchased a majority of the stock of the Pacific Mail Line of Steamers?

A. Yes, it was operating a transportation system from New York to San Francisco.

8. Q. Was this transaction the business of transportation?

A. Most assuredly it was. It was to have an outlet for Asiatic business.

9. Q. Then the Pacific Mail Line within the meaning of "transportation company" given by you, is a part of the Southern Pacific Co.

A. I should think it was. It is operated in order to give an outlet to the Asiatic business.

10. Q. How many steamers has the Pacific Mail Line?

A. Sixteen steamers.

11. Q. Are the 60,491 employes referred to by Judge Humphreys on cross-examination employed by the corporation which composes the leased lines, and lines operated under their own organizations, or are they employed outright by the Southern Pacific Co. alone?

A. They are employed by the Southern Pacific Co. alone.

12. Q. The 60,491 employes referred to by you on cross-examination, are employed upon, and only in the operation of the leased lines of railroad and the steamship line?

A. Yes.

13. Q. The valuation placed by you upon the rolling stock, was that the valuation of the leased lines, or lines that are operated under their own organizations?

A. Rolling stock owned by the Southern Pacific Co. but running on the lines of the leased lines and temporarily leased or assigned to them.

14. Q. Please file a statement showing the value of the steamers engaged in the Pacific Mail Line, and state, if you know, the market value of the stocks owned by the Southern Pacific Co. for each of the years involved in this litigation, on September 15, 1901, September 15, 1902, September 15, 1903, September 1, 1904, September 1, 1905, and June 30, 1906, and June 30, 1907?

A. I do not know the value. The stocks are not quoted or listed in the Stock Exchanges, except the stock of the Pacific Mail Line. I will file a statement showing

the quotations of the Pacific Mail Line stocks at the dates named, and mark it Exhibit 29.

WM. MAHL.

Sworn to before me this 28th day of December, 1907

LUCY B. MACDONALD,  
*Notary Public,*  
*New York Co.*

(SEAL.)

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STATE OF NEW YORK,

CITY AND COUNTY OF NEW YORK.

} SS.

I, Lucy B. Macdonald, a Notary Public in and for the City and County of New York, do hereby certify that the foregoing deposition of William Mahl was taken by me in shorthand, and written out by me, the same having been taken pursuant to a stipulation between Counsel for Plaintiff and Counsel for Defendants, said deposition having been read over by the witness, William Mahl, and subscribed by him.

In witness whereof I have hereunto set my hand and seal this 28th day of December, 1907.

(Signed) LUCY B. MACDONALD,  
*Notary Public,*  
*New York Co.*

(SEAL.)

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It is agreed between counsel for the plaintiff and defendants in this action of the Commonwealth of Kentucky against the Southern Pacific Company, et al., pending in the Franklin Circuit Court for Franklin County, Kentucky, that the deposition of William Mahl be taken by Lucy B. Macdonald instead of W. Bernard Vause, pursuant to the notice attached to said deposition, and

at the office of the Southern Pacific Company in New York City, on December 4th and 5, 1907, instead of at the office of said Wm. Bernard Vause, 198 Broadway, New York City; and that said Lucy B. Macdonald will certify the same, she having taken the said deposition, and that there need be no other certificate thereto.

Dated December 5, 1907.

(Signed) N. B. HAYES,

*Attorney General.*

(Signed) ALEX. P. HUMPHREY,

*Counsel for Defendants.*

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### EXHIBITS

to be attached to the deposition of William Mahl, in the action pending in the Franklin Circuit Court, between the Commonwealth of Kentucky, vs. Southern Pacific Co., et al, taken by Lucy B. Macdonald, Stenographer, at the office of the Southern Pacific Co., 120 Broadway, New York, December 4th and 5, 1908.

Seven were sent you with the original deposition of William Mahl on January 9, 1908. This completes the deposition and exhibits.

LUCY B. MACDONALD,

200 Broadway, New York.

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17. Q.—Exhibit No. 1.

### SOUTHERN PACIFIC COMPANY.

Memorandum of stocks from which dividends amounting to \$173,706.50 were received during the year ended September 15, 1901.

\$91,800.00	Wells, Fargo & Co.'s Express.
2,200.00	Automatic Interchangeable Car Coupler Co.
44,000.00	Gila Valley, Globe & Northern R'y Co.
33,000.00	Kern Oil Co.
2,706.50	Buena Vista Petroleum Co.
<u>\$173,706.50</u>	

Rec'd by mail and filed February 24, 1908.

BEN MARSHALL, *C. F. C. C.*

#### 18. Q.—Exhibit No. 2.

#### SOUTHERN PACIFIC COMPANY.

Memorandum of bonds from which interest, amounting to \$368,980.00, was received during the year ended September 15, 1901.

\$34,250.00	Oregon & California R. R. Co. 5% bonds.
3,800.00	Riverside & Arlington R. R. Co. 4% bonds.
58,600.00	Southern Pacific R. R. (of Cal.) 5% bonds of 1893.
111,200.00	Gulf, Western Texas & Pacific R'y Co. 5% bonds.
40,000.00	Galveston, Houston & Northern R'y Co. 5% bonds.
9,000.00	Houston & Shreveport R. R. Co. 6% bonds.
23,733.33	Texas & New Orleans R. R. Co. Dallas Division 4% bonds.
5,483.33	Texas & New Orleans R. R. Co. First Mortgage 7% bonds.
2,913.34	Southern Pacific Co. (C. P. Stock Collateral) 4% bonds.
80,000.00	Carson & Colorado R'y Co. 4% bonds.
<u>\$368,980.00</u>	

Rec'd by mail and filed February 24, 1908.

BEN MARSHALL, *C. F. C. C.*

## Exhibit No. 3.

## SOUTHERN PACIFIC COMPANY.

Mileage of Railways, River, and Ocean Lines which constitute the Transportation System of the Southern Pacific Company.

Operated by the Southern Pacific Company under leases to it.

## CENTRAL PACIFIC RAILWAY:

Oakland Local Lines, viz.:

Oakland Pier to East Oakland..... 4.89

Alameda Local Lines, viz.:

Oakland Pier to Melrose..... 5.73

Oakland to Niles..... 25.63

San Jose, Cal., to Brighton..... 121.84

Brighton to Elvas..... 3.18

Sacramento to near Ogden, Utah..... 734.47

Ogden, Union Station to Utah Central Crossing... .11

Derby to Wadsworth..... 5.69

Umbria to Cecil..... 102.92

Roseville to Oregon State Line..... 296.61

Lathrop to Goshen..... 146.27

Halven to Alvarado..... 2.46

San Francisco to Oakland (Ferry 3.69 miles).

San Francisco to Sacramento (River line 125 miles).

Marysville Steamboat line (River line 190 miles).

Leased Lines ..... 39.46

1,489.26

## OREGON &amp; CALIFORNIA RAILROAD (Oregon):

Portland to California State Line..... 366.61

Portland to Corvallis..... 96.52

Woodburn to Natron..... 92.96

Albany Junction to Lebanon..... 11.50

Portland to Airline..... 73.52

Sheridan Junction to Sheridan..... 7.18

Mohawk Junction to Wendling..... 15.95

Springfield to Springfield Junction..... 1.12

Leased Lines ..... .80

666.16

## SOUTH PACIFIC COAST R'Y (California):

Elmhurst to Wright.....	49.30
Alameda Mole to 14th St., Oakland.....	4.33
Alameda Junction to High Street.....	5.00
Wright to Santa Cruz (narrow gauge).....	18.46
Newark to Centerville (narrow gauge).....	3.00
Campbells to New Almaden (narrow gauge).....	9.60
Felton to Boulder Creek (narrow gauge).....	7.30
Junction South Big Trees to Old Felton (narrow gauge).....	1.70
San Francisco to Alameda (Ferry 3 miles).	
Newell Creek to Shingle Mill.....	1.67

100.36

## SOUTHERN PACIFIC RAILROAD:

San Francisco to Tres Pinos.....	100.41
Alcalde to Yuma.....	554.00
Mojave to Needles.....	*242.51
Carnadero to Salinas City.....	35.11
Salinas City to San Miguel.....	90.86
Los Angeles to San Pedro.....	24.27
San Miguel to Saugus.....	239.74
Stockton to Milton.....	24.56
Baden to South San Francisco.....	1.59
Hillsdale to New Almaden.....	7.71
Pajaro to Santa Cruz.....	20.30
Aptos to Monte Vista.....	4.27
Castroville to Lake Majella.....	19.57
Avon to San Ramon.....	20.27
Near Martinez to Armona.....	193.22
Kerman to Fresno.....	15.15
Peters to Merced.....	59.27
Berenda to Raymond.....	20.98
Fresno to Pollasky.....	24.14
Fresno to Famoso.....	102.28
Burbank to Chatsworth Park.....	21.56
Clement Junc. to Port Los Angeles.....	17.87
Home Junction to Soldiers' Home.....	2.97
San Pedro to Point Fermin.....	2.95
Florence to Santa Ana.....	32.00
Miraflores to Tustin.....	11.70
Studebaker to Whittier.....	5.91
Long Beach to Thenard.....	4.30
Dolgeville to Pasadena.....	4.83
Dolgeville to Duarte.....	13.72
Loara to Los Alamitos.....	10.08
Ontario to Chino.....	8.61
Declez to Declezville.....	2.55
San Bernardino to Riverside.....	11.06

Redlands Junction to Grafton.....	7.19
Riverside Extension .....	1.54
Bassett to Pomona.....	17.40
Pomona Junction to Chino.....	4.50
Montalvo to Burbank.....	60.07
Spreckles Junction to Spreckles.....	2.82
Ventura Junction to Nordhoff.....	15.13
Goshen to Exeter.....	16.78
Surf to Lompoc.....	10.36
Guadalupe to Bettaravia.....	4.41
Madera to end of track.....	3.91
Santa Ana to Newport Beach.....	11.71
Newport Beach to Smeltzer.....	10.73
Oil Junction to Oil City.....	6.38
Treadwell Junction, North.....	2.47
Bakersfield to Olig.....	50.07
West Oakland to near Martinez.....	31.03
West Oakland to Port Costa.....	
Benicia to Suisun.....	16.35
Woodland to Tehama.....	100.83
16th Street, Oakland, to Berryman.....	5.35
Willows to Fruto.....	16.84
Elmira to Rumsey.....	51.39
Napa Junction to Santa Rosa.....	37.24
Sacramento to Placerville.....	61.71
Gali to Ione.....	27.46
Woodbridge to Valley Springs.....	29.53
Port Costa to Benicia (Ferry 1 mile).	
16th Street, Oakland, to Corbin.....	3.39
Fair Oaks Junc. to Fair Oaks Bridge.....	2.14
Motor Junction to Redlands.....	2.87
San Pablo to Point Richmond.....	1.60
Wyo to Hamilton.....	11.08
Burbank to Los Angeles River Station.....	
Oroville to Knight's Landing.....	53.71
Vallejo to Sacramento.....	60.26
Davis to Knight's Landing.....	18.59
Napa Junction to Calistoga.....	34.50
Vallejo Junc. to Vallejo (Ferry 2 miles).	
East Bank of Colorado River to Arizona and New	
Mexico Line .....	393.46
Arizona State Line to East Bank of Rio Grande..	167.91
Leased Lines .....	91.25
	<hr/> 3,394.28
NEW MEXICO & ARIZONA R. R. (Arizona):	
New Mexico and Arizona Junction to Nogales.....	88.19
SONORA RAILWAY (Mexico):	
Nogales to Guaymas.....	262.60
	<hr/> 6,000.85

Operated by the companies owning them but forming a part of the Transportation System of the Southern Pacific Company.

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DIRECT NAVIGATION CO. (Texas):

Houston to Galveston (River line 75 miles).

GALVESTON, HARRISBURG & SAN ANTONIA R'Y (Texas):

Houston to east bank of Rio Grande, El Paso	832.89
Spofford to Eagle Pass	34.64
Harwood to Gonzales	12.35
Smith's Junction to La Grange	28.36
Stella to Harrisburg	8.82
San Antonio to Smiley	54.30
Rosenburg to Beeville	147.06
Wharton to Hawkinsville	48.13
Bay City Junction to Tres Palacios	37.67
Port Lavaca to Cuero	55.30
Cuero to Smiley	26.54
Magers to west shore of Galveston Bay	46.36
Island Junction to Galveston	3.95
Strang to Sylvan Beach	3.67
Leased Lines	2.67
	<hr/> 1,342.71

HOUSTON, EAST & WEST TEXAS R'Y:

Houston (Texas) to Logansport (Louisiana)	190.94
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HOUSTON & SHREVEPORT R. R. (Louisiana):

Logansport to Shreveport	39.78
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HOUSTON & TEXAS CENTRAL RAILROAD:

Houston to Dennison, Texas	337.98
Hempstead to Austin	115.00
Austin to Llano, Texas	99.68
Burnet to Lampasas	23.01
Fairland to Marble Falls	6.40
Bremond to Ross	55.30
Mexia Junction to Nelleda	94.06
Garrett to Fort Worth, Texas	52.83
Hutchins to Lancaster	4.75
	<hr/> 789.01

## IBERIA &amp; VERMILLION RAILROAD (Louisiana):

Salt Mine Junction to Abbeville.....	15.64
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## LOUISIANA WESTERN RAILROAD (Louisiana):

Lafayette to Sabine River.....	105.41
Midland to Eunice.....	23.73
Midland to Abbeville.....	34.78
Mallard Junction to Lake Arthur.....	34.36
	<hr/> 198.28

MORGAN'S LOUISIANA & TEXAS RAILROAD  
AND S. S. CO. (Louisiana):

Algiers to Lafayette.....	144.77
Lafayette to Cheneyville.....	60.22
Alexandria Terminal .....	1.24
Cade to Arnaudville.....	29.64
Arnaudville to Port Barre.....	12.23
New Iberia to Sale Mine.....	9.85
Baldwin to Weeks Island.....	19.17
Schriever to Houma.....	14.60
Thibodaux to Napoleonville.....	25.49
Raceland to Lockport.....	10.14
New Orleans to Algiers (Ferry 1 mile).	
Morgan City to point on Noyon Teche (River line	
105 miles).	
Leased Lines .....	23.60
	<hr/> 350.95

## NEVADA &amp; CALIFORNIA RAILWAY:

Hazen to Churchill, Nevada.....	27.85
Hazen to Fallon, Nevada.....	15.66
Mound House to Tonopah Junc., Nevada.....	136.06
Tonopah Junc., Nevada, to Keeler, Cal. (narrow	
gauge) .....	150.97
	<hr/> 330.48

## TEXAS &amp; NEW ORLEANS R. R. (Texas):

Sabine River to Houston.....	111.18
Englewood to Houston.....	
Sabine Pass to Dorr Junction.....	151.00
Bonita Junction to T. & P. Crossing, Dallas.....	162.71
Nome to Sour Lake.....	8.33
Houston to Clinton.....	7.56
Leased Lines .....	5.40
	<hr/> 446.18
	<hr/> 3,703.97
	<hr/> <hr/>

## Water Lines owned and operated by the Southern Pacific Company.

### SOUTHERN PACIFIC COMPANY:

New York to New Orleans (ocean line, 1,800 miles).

New Orleans to Havana (ocean line, 700 miles).

New York to Galveston (ocean line, 1,900 miles).

### RECAPITULATION.

	Main track.	Ferries and water lines
Operated by the Southern Pacific Company under leases to it.....	*6,000.85	324.69
Operated by companies owning them but forming a part of the transportation system of the Southern Pacific Company.....	3,703.97	181.00
Owned and operated by Southern Pacific Company .....		4,400.00
Total .....	9,704.82	4,905.69
	=====	=====

\*Includes 242.51 miles leased to Atchison, Topeka & Santa Fe R'y Co.

Rec'd by mail and filed January 15th, 1908.

BEN MARSHALL, *Clerk.*

39 Q.—Exhibit No. 4.

### LEASE.

OREGON AND CALIFORNIA RAILROAD COMPANY

TO

SOUTHERN PACIFIC COMPANY.

*This indenture, made and entered into this first day of August, eighteen hundred and ninety-three, by and between the Oregon and California Railroad Company, a corporation existing under the laws of the State of*

Oregon, a party of the first part, and the Southern Pacific Company, a corporation, existing under the laws of the State of Kentucky, party of the second part,

WITNESSETH:

FIRST. The party of the first part hereby leases to the party of the second part, for the period of thirty-four years from and including the date hereof, the railroads of the party of the first part in the State of Oregon, and also all the equipments and appurtenances of every kind and nature whatsoever thereto respectively belonging or appertaining.

SECOND. The party of the second part will pay to the party of the first part a fixed yearly rental for the premises so leased, amounting to the sum of five thousand dollars per annum, which rental shall be paid in four equal installments of twelve hundred and fifty dollars each, on the first days of February, May, August and November of each year during the pendency of this lease (commencing on the first day of November, eighteen hundred and ninety-three), it being understood and agreed that the amount of such rental, so far as requisite, shall be appropriated and applied by the party of the first part to the expenses of maintaining and keeping up its corporate organization under the laws of the State of Oregon.

THIRD. The party of the second part is to operate the said leased railroads belonging to the party of the first part, and shall, in the first place, out of the earnings and income derived therefrom, pay the cost of operating such railroads and the incidental expenses connected therewith, and likewise pay the taxes and assessments on the said demised premises, the cost of insurance thereof, if and so far as affected, such amounts as it may become necessary to pay for damages to persons and property incurred in the course of operating the said leased railroads, or on account of land purchases heretofore made by or on behalf of said party of the first part, and the

expenses of repairing, maintaining, improving, adding to and keeping up the said leased railroads, with all their appurtenances, and of maintaining, providing and keeping up in suitable condition and repair, rolling stock and equipment for carrying on as economically and profitably as may be the transportation business of said leased railroads, and so far as the same shall not be paid from rentals or income or proceeds of sale of lands and the expenses of and connected with the lands of said party of the first part, and perfecting the title thereto, and payment of taxes and assessments thereon, and the expenses of and connected with its land department; and after the payments and deductions aforesaid, the said lessee shall apply the residue of the amount of the net income and earnings of said railroads, to such extent as shall be required for the purpose, to the payment of the interest and any sinking fund contributions from time to time becoming due and payable during the existence of this lease upon the now existing bonded indebtedness of the party of the first part as may be created by said party of the first part with the assent of the party of the second part hereto.

AND IT IS FURTHER PROVIDED AND AGREED, by and between the parties hereto, that on the first day of May, in each year, during the continuance of this lease, the party of the second part shall pay to the party of the first part such balance, if any, of the net earnings or income received by the party of the second part from the said leased premises, with the appurtenances, for the year ending on the 31st day of December then next preceding, as shall remain in its hands after all the payments, expenses, deductions and advances and all the payments for interest and sinking fund contributions hereinbefore provided for or agreed or directed to be made, are paid.

PROVIDED, HOWEVER, that if at the time—viz., such first day of May, when such balance of such income or

rental is provided to be paid to the party of the first part—there shall be any sum due or owing from the party of the first part to the party of the second part, for or in respect of advances or payments theretofore made by the party of the second part, or for new additions or improvements to the demised premises or any part thereof, or for expenses of keeping up the corporate organization of the party of the first part, or maintaining agencies for the transfer of its stock and bonds, or for any expenses of its business or affairs, or for or in respect of any other sums which may have been lawfully advanced or paid by the lessee to or for the party of the first part, the party of the second part shall be entitled to retain and pay to itself whatever may be owing to it from the party of the first part for or in respect of any of the causes or matters or considerations aforesaid, including any interest which may be due or owing from the party of the first part to the party of the second part thereon.

AND PROVIDED FURTHER, that if such balance of net earnings or income received by the party of the second part from the said leased premises, with the appurtenances, for any year, and which, by the foregoing provisions hereof, would be and become payable by said party of the second part to the said party of the first part, shall exceed the amount of seven per cent. per annum upon the par value of the then existing preferred stock of the party of the first part, and six per cent. upon the par value of the then existing common stock of said party of the first part, then and in that event the said party of the second part shall be entitled to and shall retain to itself for its own use any and all excess of such balance of net earnings and income over and above the amount of seven per cent. per annum upon the par value of the then existing preferred stock, and six per cent. per annum upon the par value of such then existing common stock of the party of the first part.

FOURTH. It is further understood and agreed between the parties hereto that at the time when this lease shall go into operation, the party of the second part shall receive and be entitled to use and apply in the operations of the said demised premises, all fuel, rails and materials and supplies which shall then be on hand belonging to the party of the first part; and likewise to collect and receive all sums which may be at that time due and owing to the party of the first part for freights and passage money, including all sums in the hands of agents or employees, or due from connecting roads, and likewise that the sums may at such time be due or owing by the party of the first part for back wages of employees and for fuel, rails and other materials and supplies for the business of said demised premises, or to connecting roads or damages to persons or property in the operation of the road, or for other incidental expenses of the party of the first part, shall be paid by the party of the second part, and all the receipts and payments for and on account of such back freights and passage money and moneys in the hands of agents, employees or connecting roads, and for such back wages and debts for fuel, rails and other materials and supplies and to connecting roads, and for damage to persons and property and incidental expenses as aforesaid, shall be brought into and form part of the accounts of the party of the first part with the party of the second part hereunder for the year ending December 31, 1893, in like manner and with like effect in all respects as if the same had accrued during that year.

FIFTH. In case the amount of net earnings or income of the said demised premises applicable under the preceding provisions hereof to the payment of the current interest upon the bonded indebtedness of the party of the first part, shall be insufficient in any year to pay in full such current interest for the year, it shall be optional, with the party of the second part, whether or not to

advance or pay for account of the party of the first part the amount of such deficiency, and if the party of the second part shall advance or pay for account of the party of the first part such deficiency, or any part thereof, it shall be entitled to interest at the rate of six per cent. per annum upon such advances or payments until reimbursed therefor, and shall be entitled to repay itself for such advances or payments and interest at any time, or from time to time, out of any subsequent earnings or income of said demised premises in the manner provided by the third article hereof in that behalf, and shall have a lien therefor upon the demised premises, and the income thereof, until such advances or payments, with interest thereon, shall be reimbursed; and in case the party of the second part shall at any time, or from time to time, make any advances to or for the party of the first part, for new additions or improvements of the demised premises, or any part thereof, or for the necessary expenses of keeping up the corporate organization of the party of the first part, or maintaining agencies for transfer of its stock and bonds, or for other incidental expenses not paid by the party of the second part under the lease, or for any other object or purpose, the party of the second part shall be entitled to receive interest upon all such advances at the rate of six per cent. per annum from the making until the reimbursement thereof, and the party of the second part shall have a lien for such advances, and the interest thereon, upon the said demised premises, and the income thereof, until such advances are reimbursed, with interest, and the party of the second part shall be entitled at any time, and from time to time, to refund to itself such advances and interest out of any earnings or income of the demised premises which may be in its hands, unless it shall have been expressly agreed between the parties hereto to the contrary, in writing, at or before the making of such advances.

SIXTH. The party of the second part will, when thereunto requested so to do by the party of the first part, guarantee the payment of the principal and interest of all bonds of the party of the first part which may have been or may hereafter be issued under mortgage from the party of the first part to the Union Trust Company of New York, dated July 1, 1887, such guarantee to be substantially in the form following, viz.: "For value received, the Southern Pacific Company hereby guarantees the punctual payment of the principal of and interest upon this bond as therein provided, and agrees that the mortgage given to secure its payment shall have priority of lien upon the mortgaged property over its lien and claims thereon as lessee of the Oregon and California Railroad.

"In Witness Whereof, the corporate seal of the said Southern Pacific Company is hereto affixed and attested by its Treasurer, by order of the Board of Directors, this thirty-first day of December, 1887.

"Attest:

.....  
*"Treasurer."*

SEVENTH. This Indenture may be at any time modified in any of its terms or provisions, or canceled, by agreement of the parties hereto.

IN WITNESS WHEREOF, the party of the first part has caused these presents to be signed by its second Vice-President and Secretary, and the party of the second part has caused these presents to be signed by its Vice-President and Secretary, and both parties have caused their respective corporate seals to be hereunto affixed.

THE OREGON AND CALIFORNIA RAILROAD CO.,

By R. Koehler,  
*Second Vice-President.*

(O. & C. R. R. Co. Corporate Seal.)

THE OREGON AND CALIFORNIA RAILROAD CO.,

By Geo. H. Andrews,  
*Secretary.*

SOUTHERN PACIFIC COMPANY,

By Chas. F. Crocker,  
*Vice-President.*

(So. Pac. Co. Corporate Seal.)

SOUTHERN PACIFIC COMPANY,

By G. L. Lansing,  
*Secretary.*

*Assent of the preferred stockholders of the Oregon and California Railroad Company to the foregoing agreement:*

We, the undersigned holders of the number of shares of the preferred stock of the Oregon and California Railroad Company set opposite our names, which said number of shares is an absolute majority in amount of all the preferred stock of said company actually issued and outstanding, do hereby consent to ratify and approve the execution of the foregoing instrument in manner and form as therein set out.

Names.

Number of Shares.

Pacific Improvement Co..... 119,825 shares

By F. S. Douty, Secretary, etc.

F. S. Douty .....	5.	“
Chas. F. Crocker .....	five 5	“
H. E. Huntington .....	five 5	“
R. Koehler .....	five 5	“
Geo. H. Andrews .....	five 5	“
W. W. Bretherton .....	five 5	“

*Assent of trustees for the holders of the preferred stock of the Oregon and California Railroad Company to the foregoing agreement:*

We, S. T. Gage, N. T. Smith and W. E. Brown, Trustees for the holders of the preferred stock of the Oregon and California Railroad Company, hereby consent to and approve the execution of the foregoing instrument in manner and form as therein set out.

N. T. SMITH,  
W. E. BROWN,  
S. T. GAGE.

*This agreement*, made and entered into this 4th day of March, A. D. 1897, by and between the Oregon and California Railroad Company, of the first part, and the Southern Pacific Company of the second part.

WITNESSETH:

THAT WHEREAS, heretofore and under date of August 1, 1893, an agreement of lease was made and entered into by and between the parties hereto, wherein, among other things, it was provided that on the first day of May in each year during the continuance of said lease, the party of the second part should pay to the party of the first part such balance of the income or earnings of the leased premises, with the appurtenances, received by the party of the second part for the year ending on the 31st day of December then next preceding, as should remain in the hands of the party of the second part after the deduction of certain charges and expenses in said lease particularly set forth.

AND WHEREAS, it is to the convenience of both of said parties to change the dates of said accountings and settlements so as to conform to the reports required by the Interstate Commerce Commission and other governmental bodies and officers by adopting as the basis therefor a fiscal year ending June 30 of each year instead of December 31st, as in said lease contemplated.

NOW THEREFORE, it is hereby agreed by and between the parties hereto that the lease aforesaid be, and the same hereby is modified and changed so that hereafter all

said balances shall be paid on the first day of November of each year during its continuance, and shall be for and on account of the year ending on the 30th day of June then next preceding, except that in the first settlement which shall be made under this modification of said lease, to wit, that of November 1, 1897, such settlement shall be made upon an accounting for the whole period from January 1, 1896, to June 30, 1897, both days inclusive.

AND IT IS UNDERSTOOD by and between the parties hereto that, except as hereinbefore modified, said lease shall, in all respects, be and remain in full force and effect.

IN WITNESS WHEREOF, the said parties have caused these presents to be signed by their respective Presidents or Vice-Presidents, and Secretaries, under their several corporate seals, the day and year first above written.

THE OREGON AND CALIFORNIA RAILROAD Co.,

By R. Koehler,

*Second Vice-President.*

(Corporate Seal.)

Geo. H. Andrews,

*Secretary.*

SOUTHERN PACIFIC COMPANY,

By Chas. F. Crocker,

*Vice-President.*

(Corporate Seal.)

E. C. Wright,

*Secretary.*

45-46 Q.—Exhibit No. 5.

## SOUTHERN PACIFIC COMPANY.

Since looking into the matter, I find that the records of the Company do not show the division as between proceeds from sales of lands and proceeds from lease of lands. The \$4,669.29 proceeds from sale or lease of lands, returned in Exhibit "B," filed with report for the year ended September 15, 1901, was derived from the following sources, viz:

From sale or lease of lands.....	\$4,605.75
From interest on deferred payments....	63.54
	<hr/>
Total.....	\$4,669.29

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Rec'd by mail and filed February 24th, 1908.

BEN MARSHALL, C. F. C. C.

## SOUTHERN PACIFIC COMPANY.

Statement showing operating expenses, taxes, interest, and all other disbursements for account of lines leased and operated by the Southern Pacific Co. during the years 1901, 1902, 1903, 1904, 1905, 1906, and 1907.

	Years Ended					June 30, 1906.	June 30, 1907.
	September 15, 1901.	September 15, 1902.	September 15, 1903.	September 1, 1904.	September 1, 1905.		
M. L. & T. R. R. & S. S. Co.	\$7,732,586 00	\$4,382,545 10	-----	-----	-----	-----	-----
L. W. R. R. Co.	1,676,598 59	994,373 49	-----	-----	-----	-----	-----
S. P. R. R. Co. of New M.	1,608,634 34	-----	-----	-----	-----	-----	-----
S. P. R. R. Co. of Ariz.	3,389,281 98	28,004,130 82	30,398,897 27	32,275,367 40	31,782,183 98	34,787,693 76	41,657,836 23
S. P. R. R. Co. of Cal.	20,317,344 06	-----	-----	-----	-----	-----	-----
Gen. Pac. R'y Co.	19,520,971 81	20,191,111 62	21,121,671 41	22,547,695 96	23,964,740 43	26,933,638 31	30,351,024 83
Ore. & Cal. R. R. Co.	2,930,088 86	3,504,911 38	3,991,347 12	4,296,199 99	4,381,370 55	5,885,183 46	6,417,151 93
So. Pac. Coast R'y Co.	1,119,597 75	1,360,249 46	1,763,510 57	1,209,318 36	1,188,878 86	1,443,878 53	2,129,040 30
New Mexico & Ariz. R. R.	306,339 88	380,101 06	263,694 50	292,028 31	384,605 45	340,185 09	403,344 13
Sonora R'y	677,395 79	681,346 52	628,583 94	818,661 05	765,041 30	908,558 81	955,691 08
Total	\$59,278,839 06	\$59,498,769 45	\$58,167,704 81	\$61,439,271 07	\$62,466,820 57	\$70,299,137 96	\$81,914,088 50

498

Rec'd by mail and filed February 24, 1908.

BEN MARSHALL, F. C. C.

59 Q.—Exhibit No. 7.

LEASE.  
CENTRAL PACIFIC RAILROAD COMPANY  
TO  
THE SOUTHERN PACIFIC COMPANY.

*This Agreement*, made and entered into this seventeenth (17) day of February, 1885, between the Southern Pacific Company, a corporation duly organized and existing under the laws of the State of Kentucky, and now doing business in the State of California, and the Central Pacific Railroad Company, a corporation duly formed and existing under the laws of the State of California and the United States, WITNESSETH:

THAT WHEREAS part of the through business heretofore done by the Central Pacific Railroad Company's line from Ogden to the waters of the Pacific has been diverted by the Northern Pacific, Atlantic and Pacific, and Atchison, Topeka and Sante Fe railroads;

AND WHEREAS the Union Pacific Railroad Company has secured the control of the road known as the Ogden Short Line, and thereby secured an outlet to the Pacific, other than over the Central Pacific Railroad, and thus in that respect placed itself in opposition to the interests of the Central Pacific;

AND WHEREAS it now appears that the through business, hitherto done by the Central Pacific Railroad, will thereby be further diverted; and that it is not only to the best interests of, but absolutely necessary that, the Central Pacific Railroad Company, in order to maintain itself against these diversions, should be operated in con-

nection with a friendly through line to the waters of the Atlantic;

AND WHEREAS the said Southern Pacific Company has a line of railroad under its control, for a period of ninety-nine years, extending continuously from the Pacific Ocean to the Atlantic Ocean;

AND WHEREAS the lines of each company are doing a large local traffic, and it is important to both that the same should be conducted in harmony;

AND WHEREAS the said Southern Pacific Company is willing to enter into an agreement with the Central Pacific Railroad Company whereby its line and the line of the said Southern Pacific Company shall be operated so as to secure their just rights to each without the one gaining any benefit or advantage at the expense of the other, and whereby the Central Pacific Railroad Company may for a long term of years be assured of protection against the diversion of its traffic and be relieved of the disadvantages flowing from lack of harmonious connections;

AND WHEREAS by reason of the facts before recited it is mutually advantageous to the Southern Pacific Company and the Central Pacific Railroad Company to make such agreement;

AND WHEREAS both companies contract in the knowledge that the future development of the country may change materially the relations of the companies to each other in respect to railroad traffic, and may in the future render any agreement now made, however fair in its terms in view of existing conditions, advantageous to one at the expense of the other, and thereby defeat the purposes which said companies desire and intend to accomplish by making this agreement;

AND WHEREAS it is intended that such shall never be the effect of this agreement, therefore all the promises and covenants herein shall be construed in the light of the conditions now existing, and the arbitrators herein-

after named, in adjusting the terms and provisions of this agreement to a changed state of affairs, if such change should ever take place, must keep in view the main purpose of the parties to this agreement, to wit, that it is for the mutual advantage of both parties, and that neither is to be benefited at the expense of the other;

NOW, THEREFORE, to accomplish the purposes aforesaid, in consideration of the premises and of the mutual promises herein, the said Central Pacific Railroad Company hereby leases to the said Southern Pacific Company, for the term of ninety-nine years, from the first day of April, A. D. 1885, the whole of its railroad situated in the Territory of Utah and States of Nevada and California, and known and designated as the Central Pacific Railroad, together with all the branches thereof, together with all the rolling stock, telegraph lines, steamboats, wharves, piers, depots, workshops, and all other property, real and personal, now owned, held, and possessed by the said Central Pacific Railroad Company and used upon, or in connection with, said railroad and telegraph lines, together with all the appurtenances thereunto belonging, with the right to possess, maintain, use, operate, and enjoy the said property, and to receive the rents, issues, and profits thereof.

And the said Central Pacific Railroad Company hereby assigns to the said Southern Pacific Company all the leases which it now holds of railroads and other property situated in said State of California, and lying and being north of the town of Goshen, in the County of Tulare, with the right to take, hold, operate, maintain, and enjoy said railroads and other property in the same manner as the said Central Pacific Railroad Company holds, operates, enjoys, and maintains the same under the said leases, and with the right to receive the rents, issues, and profits thereof.

And the said Central Pacific Railroad Company hereby releases the Southern Pacific Railroad Company,

a corporation formed and existing under the laws of the United States and of the State of California, and the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the Territory of Arizona, and the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the Territory of New Mexico, and each of them, from all and every obligation under or by virtue of any and every lease made by said three last-mentioned railroad companies, or either of them, to the said Central Pacific Railroad Company, and transfers and surrenders unto the said Southern Pacific Company, the possession of all the property in said leases, or any of them mentioned or described, with the right to receive the rents, issues, and profits thereof free from all claim of the said Central Pacific Railroad Company to the same or any part thereof.

The said Southern Pacific Company agrees to and with the said Central Pacific Railroad Company that it will keep and maintain the property hereby leased in good order, condition, and repair; operate, maintain, add to, and better the same, at its own expense; pay all taxes legally assessed against or levied thereon, and will at the termination of this lease return the same to the said Central Pacific Railroad Company, or to its successors or assigns (with additions and betterments) in as good condition and repair as the same was at the date hereof.

And the said Southern Pacific Company hereby agrees to and with the said Central Pacific Railroad Company that it hereby assumes and will discharge all the liabilities and obligations of every kind (including its obligations on leases now held by it) of the said railroad company, except the obligation to pay the principal of said railroad company's indebtedness known as its "floating debt," and except the obligation to pay the principal of the indebtedness of said railroad company known as its "bonded indebtedness," now outstanding and secured by

mortgage or deed of trust, or which may be hereafter incurred under the provisions of any existing mortgage or deed of trust, or of any mortgage or deed of trust hereafter made with the consent of the Southern Pacific Company; and except the principal of all indebtedness the payment of which has heretofore been guaranteed by the Central Pacific Railroad Company; and except the principal of the indebtedness of the said Central Pacific Railroad Company evidenced by bonds of the United States heretofore by the Government thereof loaned to the said Central Pacific Railroad Company. That as to such excepted indebtedness the said Southern Pacific Company will pay off and discharge at maturity the interest upon the same, except the interest upon the bonds of the United States loaned as aforesaid; and that, as to such bonds and the interest thereon, the said Southern Pacific Company will discharge the annual obligations imposed upon said Central Pacific Railroad Company by existing acts of Congress, and will during the continuance of this agreement fully comply with the terms of, perform all the duties prescribed in, and discharge all the obligations imposed upon said Central Pacific Railroad Company by the act of Congress commonly known as the "Thurman Act."

And the said Southern Pacific Company hereby agrees to and with the said Central Pacific Railroad Company that it will well and truly perform all the duties and obligations of said railroad company to the United States and the Government thereof under existing acts of Congress relating to the maintenance and operation of its railroad, and to transportation for said Government over the same, as fully and faithfully as said railroad company is bound to do, except as otherwise hereinbefore provided.

And the said Southern Pacific Company agrees to and with the said Central Pacific Railroad Company that it will keep true and faithful accounts of all the earnings of the said Central Pacific Railroad, including the earn-

ings of the railroads now held by said Central Pacific Railroad Company under leases and situated north of Goshen, together with true and faithful accounts of all expenditures, payments, and disbursements of every kind made by the said Southern Pacific Company in operating, maintaining, adding to, and bettering the same, and of all expenditures, payments, and disbursements made by the said Southern Pacific Company for taxes, rentals, interests, or in discharge of obligations incurred by said Southern Pacific Company under the provisions of this agreement hereinbefore contained: *Provided, however,* That any payments made by the said Southern Pacific Company to either of the said Southern Pacific railroads hereinbefore mentioned for rentals under the terms of existing leases in favor of the said Central Pacific Railroad Company, and now assigned to the Southern Pacific Company, shall never be included in or made part of any charge against the said Central Pacific Railroad Company or the earnings of its said railroads.

And the said Southern Pacific Company hereby agrees with the said Central Pacific Railroad Company that during the continuance of this lease it will annually, on the first Monday in May, pay to the said Central Pacific Railroad Company, as guaranteed rental for said Central Pacific railroad and other leased property for the year ending on the thirty-first day of December next preceding that date, the sum of one million two hundred thousand dollars (\$1,200,000).

And the said Southern Pacific Company hereby further in this behalf agrees with the said Central Pacific Railroad Company that if the earnings of the said Central Pacific Railroad, and of the railroads situated north of Goshen now held by the said Central Pacific Railroad Company under leases, shall in any year during the continuance of this agreement exceed all expenditures, payments, and disbursements of every kind made by the said Southern Pacific Company for such year, in operat-

ing, maintaining, adding to, and bettering the same, and of all expenditures, payments, and disbursements made by the said Southern Pacific Company for taxes, rentals, interest, and in discharge of any of the obligations by said Southern Pacific Company incurred under this agreement, as heretofore provided, including the said sum of one million two hundred thousand dollars, then such excess for any such year not exceeding the sum of two million four hundred thousand dollars shall, on the first Monday in May, as aforesaid, be paid to the said Central Pacific Railroad Company as additional rental for such year.

And it is further agreed between said Southern Pacific Company and the said Central Pacific Railroad Company that if at any time it appears that by the operation of this agreement either party is being benefited at the expense of the other, then this agreement shall be revised and changed, so that such will not be the operation thereof, and if the parties hereto can not agree upon the changes necessary to that end, then each party shall appoint one arbitrator, disinterested, but skilled in relation to the subject matter, and the award and decision of such arbitrators, in writing, shall be binding upon the parties hereto, and this agreement shall be revised and changed in accordance with such award and decision, and, as revised and changed, shall be duly executed in writing by the parties hereto.

And it is further agreed that if the arbitrators so chosen can not agree upon an award and decision, then that the two shall choose a third impartial and skilled arbitrator, and that the award or decision of two of said three arbitrators shall have the same force and effect between the parties hereto, and shall be executed in like manner as hereinbefore provided for the award and decision of the two arbitrators first chosen.

And it is further agreed between the said Southern Pacific Company and the said Central Pacific Railroad

Company that if any legislation or governmental action hereafter be had which, in the opinion of the said Southern Pacific Company, is in hostility to the said Central Pacific Railroad Company, its rights, or the property hereby leased, the said Southern Pacific Company may, on notice to the said Central Pacific Railroad Company, terminate this agreement, or may submit to arbitrators, in the manner and with the effect hereinbefore provided for, changes and revisions.

And it is further agreed between the Southern Pacific Company and the Central Pacific Railroad Company that, upon the execution of this agreement, the said Southern Pacific Company may enter upon, take possession of, and hold during the continuance of this agreement all the property, real and personal, hereby leased by the said Central Pacific Railroad Company to the said Southern Pacific Company, and that duplicate lists of all the rolling stock and other personal and movable property so leased, showing its condition at the time of the execution of this agreement, shall be made and certified by the secretary of each of said companies, and that one of said lists shall be kept by each of said companies.

And it is further agreed between the Southern Pacific Company and the Central Pacific Railroad Company that if at any time any of the rolling stock or other personal property hereby leased to the said Southern Pacific Company by said Central Pacific Railroad Company be used upon any roads other than the Central Pacific Railroad or the leased roads north of Goshen, then the said Southern Pacific Company shall credit to the said Central Pacific Railroad Company the usual and customary sums paid by one railroad company to another for the use of the like property, and that the amounts so credited shall be deemed and taken to be a part of the earnings of said Central Pacific Railroad Company.

And it is further agreed that if, in the operation of said Central Pacific Railroad and leased roads north of

Goshen, it becomes necessary to use any of the rolling stock or other personal property of the Southern Pacific Company, not leased from the Central Pacific Railroad Company, upon the said Central Pacific Railroad or leased roads north of Goshen, that the usual and customary sums paid by one railroad company to another for the use of like property, shall be allowed as, and constitute a charge against, the receipts of the said Central Pacific Railroad and said leased lines, and be so considered in the accounting hereinbefore provided for.

IN TESTIMONY WHEREOF, the said Southern Pacific Company and the said Central Pacific Railroad Company have caused these presents to be signed by their respective presidents, countersigned by their secretaries, and their corporate seals to be hereunto affixed, pursuant to orders of their respective boards of directors, the day and year first herein written.

In duplicate.

(S. P. Co. Corporate Seal.)

W. E. BROWN,  
*President Southern Pacific Co.*

H. C. NASH,

*Secretary Southern Pacific Co.*

(C. P. R. R. Co. Corporate Seal.)

LELAND STANFORD,  
*President Central Pacific Railroad Co.*

E. H. MILLER, JR.,

*Secretary Central Pacific Railroad Co.*

CENTRAL PACIFIC RAILROAD COMPANY

TO

THE SOUTHERN PACIFIC COMPANY.

Modification of Lease.

*This agreement made and entered into this first day of January, 1888, by and between the Southern Pacific Company, a corporation duly organized and existing under the laws of the State of Kentucky, and the Central Pacific Railroad Company, a corporation duly formed and ex-*

isting under the laws of the State of California and the United States:

WHEREAS heretofore and under date of February 17, 1885, an agreement of lease was made and executed by and between the parties hereto; and

WHEREAS since the date of the execution of such lease the lines of railroad of the Central Pacific Railroad Company have been extended from Delta, in the State of California, to the boundary line between the States of California and Oregon, forming at the last-mentioned point a connection with the line of railroad of the Oregon and California Railroad Company; and

WHEREAS since the execution of such lease, and in or about December, 1887, the said line of railroad to the boundary line between the States of California and Oregon, constituting part of the line from San Francisco, in California, to Portland, in Oregon, has been delivered by the Central Pacific Railroad Company to the Southern Pacific Company for operation, and the railroad properties operated by the Southern Pacific Company as lessee of the Central Pacific Railroad have been materially changed; and

WHEREAS by reason of the premises the Central Pacific Railroad Company has requested a modification of the terms and provisions of the agreement of lease above referred to;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That in consideration of the premises and of the sum of one dollar by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, the parties hereto have undertaken, covenanted, and agreed, and do hereby undertake, covenant, and agree to and with each other, as follows, that is to say:

That the said Southern Pacific Company, in lieu and stead of and substitution for the payment of rental by it to said Central Pacific Railroad Company as in said lease prescribed, shall pay to the said Central Pacific Railroad Company, on the first Monday in May, 1889, and on each

first Monday of May thereafter during the continuance of said lease, as guaranteed rental for the year ending on December 31st next preceding that date, the sum of one million three hundred and sixty thousand dollars (\$1,360,000) instead of the sum of one million two hundred thousand dollars (\$1,200,000) which is in said original agreement prescribed, and is to be paid on the first day of May, 1888, in respect of the year ending December 31, 1887, and will pay to the Central Pacific Railroad Company on the first Monday in May of each year, as additional rental for the year terminating on December 31st, preceding, any excess up to but not beyond the sum of two million seven hundred and twenty thousand dollars of the earnings in such preceding year of the said Central Pacific Railroad above the expenditures, payments, and disbursements of every kind made by the Southern Pacific Company in operating, maintaining, adding to or bettering the same, or for taxes, rentals, interest, or in discharge of any of the obligations of said Southern Pacific Company incurred under said agreement of lease, or as the same is hereby modified, including the guaranteed rental above mentioned, and that the said agreement of lease shall be and is hereby modified accordingly.

IN WITNESS WHEREOF the parties hereto have caused these presents to be signed by their respective second vice-presidents and countersigned by their respective secretaries, and their respective corporate seals to be hereunto affixed, pursuant to orders of their respective boards of directors, the day and year first above written.

(S. P. Co. Corporate Seal.) CHAS. CROCKER,  
*Second Vice-President Southern Pacific Company.*

G. L. LANSING,  
*Secretary Southern Pacific Company.*

(C. P. R. R. Co. Corporate Seal.) CHAS. CROCKER,  
*Second Vice-President Central Pacific Company.*

E. H. MILLER, JR.,  
*Secretary Central Pacific Company.*

# AMENDMENT TO LEASE BETWEEN CENTRAL PACIFIC RAILROAD COMPANY AND SOUTH- ERN PACIFIC COMPANY.

*This indenture*, made and entered into this seventh day of December, eighteen hundred and ninety-three, by and between the Central Pacific Railroad Company of the first part and the Southern Pacific Company of the second part.

WHEREAS, heretofore and under date of the 17th day of February, 1885, an agreement of lease was made and entered into by and between the parties hereto, which agreement of lease was afterwards modified by agreement between the same parties bearing date the first day of January, 1888; and

WHEREAS, the operation of the demised properties under such lease has resulted in very considerable losses to the said Southern Pacific Company, and it thereby appears that by the operation of said agreement the said Central Pacific Railroad Company has been and is being benefited at the expense of the Southern Pacific Company, and a necessity has therefore arisen for a revision and change of such lease so that neither party thereto shall be benefited at the expense of the other;

NOW, THEREFORE, THIS INSTRUMENT WITNESSETH: That in consideration of the premises such agreement of lease has been and is hereby revised and changed by the parties hereto by substituting on and after the first day of January, 1894, for the existing provisions of such lease, as so modified as aforesaid, the terms, provisions, and conditions hereinafter provided and expressed, that is to say:

FIRST. The party of the first part hereby leases to the party of the second part for the period of ninety years from and including the first day of January next, the railroads of the party of the first part, together with its

branches and leased lines, and all depots and station houses, equipments, and appurtenances of every kind and nature whatsoever to the said railroads, branches, and leased lines respectively belonging or appertaining.

SECOND. The party of the second part will pay to the party of the first part a fixed yearly rental for the premises so leased, amounting to the sum of ten thousand dollars per annum, which rental shall be paid in four equal installments of twenty-five hundred dollars each on the first days of January, April, July, and October of each year during the pendency of this lease (excepting only the first day of January, eighteen hundred and ninety-four), it being understood and agreed that the amount of such rental, so far as requisite, shall be appropriated and applied by the party of the first part to the expenses of maintaining and keeping up its corporate organization.

THIRD. The party of the second part is to operate the said railroads, branches, and leased lines hereinbefore referred to. The said lessee shall apply the earnings and income derived therefrom to paying all operating expenses thereof and the incidental expenses connected therewith, including the sums payable for rentals of leased lines, and, according to their lawful priorities, to the payment of the current interest and sinking fund contributions or other payments from time to time becoming due and payable from the said Central Pacific Railroad Company, whether to the United States of America or to bondholders or others, during the existence of this lease.

And it is further provided and agreed by and between the parties hereto that on the first day of April in each year during the continuance of this lease the party of the second part shall pay to the party of the first part such balance, if any, of the net earnings or income received by the party of the second part from the said leased premises, with the appurtenances, for the year

ending on the 31st day of December then next preceding, as shall remain in its hands after all the payments hereinbefore provided for or agreed or directed are made: *Provided, however,* That if at the time, viz., such 1st day of April, when such balance of such income or rental is provided to be paid to the party of the first part, there shall be any sum due or owing from the party of the first part to the party of the second part for or in respect of advances or payments theretofore made by the party of the second part to or for or upon the request of the party of the first part for new additions or improvements to the demised premises, or any part thereof, or for expenses of keeping up the corporate organization of the party of the first part, or maintaining agencies for the transfer of its stock and bonds, or for any expenses of its business or affairs other than such as fall within the payments before provided to be made by the lessee out of the earnings or income, or for or in respect of any other sums which may have been lawfully advanced or paid by the lessee to or for the party of the first part, the party of the second part shall be entitled to retain and pay to itself whatever may be owing to it from the party of the first part for or in respect of any of the causes or matters or considerations aforesaid, including any interest which may be due or owing from the party of the first part to the party of the second part thereon.

*And provided further,* That if such balance of net earnings or income received by the party of the second part from the said leased premises, with the appurtenances, for any year, and which by the foregoing provisions hereof would be and become payable by said party of the second part to said party of the first part, shall exceed the amount of six per cent per annum upon the par value of the then existing capital stock of the party of the first part, then and in that event the said party of the second part shall be entitled to and shall retain to itself for its own use one-half part of any and

all excess of such balance of net earnings and income over and above the amount of six per cent per annum upon the par value of the then existing capital stock of the party of the first part.

FOURTH. If and so far as the party of the second part shall make any advances for payments for account of the party of the first part, the party of the second part shall be entitled to receive interest upon all such advances at the rate of six per cent per annum from the making until the reimbursement thereof, and the party of the second part shall have a lien for such advances, and the interest thereon, upon the said demised premises and the income thereof until such advances are reimbursed, with interest; and the party of the second part shall be entitled at any time and from time to time to refund to itself such advances and interest out of any net earnings or income of the demised premises which may be in its hands, unless it shall have been expressly agreed between the parties hereto to the contrary, in writing, at or before the making of such advances.

FIFTH. The agreements between the same parties dated February 17, 1885, and January 1, 1888, respectively, are hereby cancelled, except so far as they relate to operation of said demised premises prior to January 1, 1894, and adjustment of accounts in respect to such operation thereof.

SIXTH. This indenture may be at any time modified in any of its terms or provisions or cancelled by agreement of the parties thereto.

IN WITNESS WHEREOF the parties hereto have hereunto respectively affixed their corporate seals and caused these presents to be signed by their respective presidents and attested by their respective secretaries the day and year first above written.

CENTRAL PACIFIC RAILROAD COMPANY,  
(Seal.)

By H. E. Huntington,  
*President.*

Attest:

W. M. Thompson,  
*Secretary.*

SOUTHERN PACIFIC COMPANY,

(Seal.)

By C. P. Huntington,  
*President.*

Attest:

G. L. Lansing,  
*Secretary.*

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BETWEEN CENTRAL PACIFIC RAILROAD COM-  
PANY AND SOUTHERN PACIFIC COMPANY.

AGREEMENT.

*Indenture* made and entered into this twenty-second day of March, 1894, by and between Central Pacific Railroad Company, of the first part, and the Southern Pacific Company, of the second part.

WHEREAS heretofore and under date of the 7th day of December, 1893, an indenture was made and entered into by and between the parties hereto, revising and changing the then existing agreement of lease between said parties, as by said indenture, dated the 7th day of December, 1893, by reference thereto will fully and at large appear; and

WHEREAS it has been suggested, on behalf of the Central Pacific Railroad Company, that such last-mentioned indenture should be modified as hereinafter provided, and the Southern Pacific Company has assented to such proposed modification thereof;

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That in consideration of the premises the parties hereto have undertaken, covenanted, and agreed, and do hereby undertake, covenant, and agree, to and with each other as follows, viz.:

FIRST. The said indenture, dated the 7th day of December, 1893, is hereby modified by substituting in lieu of article fourth of said indenture the following article, that is to say:

FOURTH. If and so far as the party of the second part shall make any advances for payments for account of the party of the first part, the party of the second part shall be entitled to receive lawful interest upon all such advances from the making until the reimbursement thereof, and the party of the second part shall be entitled at any time and from time to time to refund to itself such advances and interest out of any net earnings or income of the demised premises which may be in its hands, unless it shall have been expressly agreed between the parties hereto to the contrary in writing at or before the making of such advances.

And it is further agreed between said Central Pacific Railroad Company and said Southern Pacific Company that if at any time it appears that by the operation of this agreement either party is being benefited at the expense of the other, then this agreement shall be revised and changed so that such will not be the operation thereof, and if the parties hereto can not agree upon the changes necessary to that end, then each party shall appoint one arbitrator, disinterested, but skilled in relation to the subject-matter, and the award and decision of such arbitrators in writing shall be binding upon the parties hereto, and this agreement shall be revised and changed in accordance with such award and decision, and, as revised and changed, shall be duly executed in writing by the parties hereto.

And it is further agreed that if the arbitrators so chosen can not agree upon an award and decision, then that the two shall choose a third impartial and

skilled arbitrator, and that the award and decision of two of said three arbitrators shall have the same force and effect between the parties hereto, and shall be executed in like manner as hereinbefore provided for the award and decision of the two arbitrators first chosen.

SECOND. The said indenture, dated the 7th day of December, 1893, as so modified by the first article hereof, is hereby in all respects ratified, approved, and confirmed.

IN WITNESS WHEREOF the parties hereto have hereunto respectively affixed their corporate seals and caused these presents to be signed by their respective presidents and attested by their respective secretaries the day and year first above written.

CENTRAL PACIFIC RAILROAD COMPANY,	
(C. P. R. R. Co. Corporate Seal.)	By Isaac L. Requa, <i>President.</i>

Attest:

W. M. Thompson,  
*Secretary.*

SOUTHERN PACIFIC COMPANY,	
(S. P. Co. Cor- porate Seal.)	By C. P. Huntington, <i>President.</i>

Attest:

G. L. Lansing,  
*Secretary.*

*This Agreement*, made and entered into this 15th day of April, A. D. 1897, by and between the Central Pacific Railroad Company, of the first part, and the Southern Pacific Company, of the second part,

WITNESSETH:

THAT WHEREAS, under existing arrangements between the parties hereto, it has been the practice that on the first day of April in each year while operating the rail-

road of the party of the first part, the party of the second part should pay to the party of the first part such balance of income or earnings of the railroad, with the appurtenances, received by the party of the second part for the year ending on the 31st day of December, then next preceding, as should remain in the hands of the party of the second part after the deduction of certain charges and expenses.

AND WHEREAS, it is to the convenience of both of said parties to change the dates of said accountings and settlements so as to conform to the reports required by the Interstate Commerce Commission and other governmental bodies and officers, by adopting as the basis therefor a fiscal year ending June 30th of each year, instead of December 31st;

NOW, THEREFORE, it is hereby agreed by and between the parties hereto that hereafter all said balances shall be paid on the first day of November of each year, and shall be for and on account of the year ending on the 30th day of June then next preceding, except that in the first settlement which shall be made under this agreement, to wit: that of November 1st, 1897, such settlement shall be made upon an accounting for the whole period from January 1, 1896, to June 30, 1897, both days inclusive.

IN WITNESS WHEREOF, the said parties have caused these presents to be signed by their respective presidents or vice-presidents, and secretaries, under their several corporate seals, the day and year first above written.

CENTRAL PACIFIC RAILROAD COMPANY,

(Corporate Seal.)

By Isaac L. Requa,

*President.*

W. M. Thompson,

*Secretary.*

SOUTHERN PACIFIC COMPANY,

(Corporate Seal.)

By C. B. Huntington,

*President.*

E. C. Wright,

*Secretary.*

59 Q.—Exhibit No. 8.

AGREEMENT OF LEASE  
BETWEEN  
SOUTHERN PACIFIC RAILROAD COMPANY  
AND  
SOUTHERN PACIFIC COMPANY.

*This Indenture*, Made and entered into this 26th day of June, 1902, by and between the Southern Pacific Railroad Company, of the first part, and the Southern Pacific Company, of the second part.

WITNESSETH: That, in consideration of the mutual undertakings and agreements hereinafter contained, the parties hereto have undertaken, covenanted and agreed, and do hereby undertake, covenant and agree, to and with each other, as follows, that is to say:

FIRST. The party of the first part hereby leases to the party of the second part to and including June 30, 1951, the railroads of the party of the first part, together with its branches and leased lines, and all equipments and appurtenances of every kind and nature whatsoever to the said railroads, branches and leased lines respectively belonging or appertaining; this lease being, however, as to the line of railroad from Mojave to the Needles, subject to the provisions of the lease thereof from the party of the first part hereto to the Atchison, Topeka and Santa Fe Railway Company, embodied in an Indenture of Lease and Contract between the Southern Pacific Railroad Company (of California), the New Mexico and Arizona Railroad Company, the Sonora Railway Company, Limited, the Atchison, Topeka, and Santa Fe

Railway Company, and the party of the second part hereto, dated July 15, 1898.

SECOND. The party of the second part will pay to the party of the first part a fixed yearly rental for the premises so leased, amounting to the sum of ten thousand dollars per annum, which rental shall be paid in four equal installments of twenty-five hundred dollars each on the first days of January, April, July, and October during the pendency of this lease, it being understood and agreed that the amount of such rental, so far as requisite, shall be appropriated and applied by the party of the first part to the expenses of maintaining and keeping up its corporate organization.

THIRD. The party of the second part is to operate the said railroads, branches and leased lines hereinbefore referred to (excepting said line of railroad from Mojave to the Needles, the rental for which is to be collected by said party of the second part), and shall apply the earnings and income and rentals derived therefrom to the payment of the expenses of operation and maintenance of the railroads, branches and leased lines operated by it and the incidental expenses connected therewith, and the sums payable for rentals of leased lines, and for taxes and assessments upon the demised premises, and to the payment, according to their lawful priorities, of the current interest on outstanding bonds of the said Southern Pacific Railroad Company, or of any divisional companies by the consolidation of which it was formed, and shall retain to its own use as compensation for its own services as such lessee ten per cent. of the balance of such earnings, income and rentals remaining after the applications above prescribed shall have been made therefrom.

FOURTH. On the first day of November in each year during the continuance of this lease and on the first day of November next succeeding the expiration of this lease, the party of the second part shall pay to the party of the first part as further rental for such demised premises

such balance, if any, of the earnings, income and rentals received by the party of the second part from, or in respect of, the said demised premises for the year ending on the 30th day of June then next preceeding, as shall remain in its hands after paying and retaining the amounts hereinbefore prescribed to be paid and retained therefrom: *Provided, however,* that if at the time, viz. such first day of November, when such balance of such earnings, income and rentals is provided to be paid to the party of the first part, there shall be any sum due or owing from the party of the first part to the party of the second part for or in respect of advances or payments theretofore made by the party of the second part to or for or upon the request of the party of the first part for additions, betterments or improvements to the demised premises, or any part thereof, or for expenses of keeping up the corporate organization of the party of the first part, or maintaining agencies for the transfer of its stock and bonds, or for any expenses of its business or affairs, or for or in respect of any other sums which may have been advanced or paid by the party of the second part, to or for or upon the request of the party of the first part, the party of the second part shall be entitled to retain and pay to itself whatever may be owing to it from the party of the first part for or in respect of any of the causes or matters or considerations aforesaid, including any interest which may be justly due or owing from the party of the first part to the party of the second part in respect thereof.

FIFTH. If and so far as the party of the first part shall be indebted to the party of the second part for any advances or payments made by said party of the second part for account of the party of the first part, the party of the second part shall have a lien for such advances and payments, and the interest thereon, upon the said demised premises and the income thereof until such advances and payments and the interest thereon are reim-

bursed; and the party of the second part shall be entitled, at any time and from time to time, to refund to itself such advances and payments and interest out of any earnings, income or rentals of the demised premises which may be in its hands, unless it shall have been expressly agreed between the parties hereto to the contrary, in writing, at or before the making of such advances.

SIXTH. The existing leases of the demised premises to the party of the second part are modified to conform herewith, except so far as they relate to transactions and rentals accruing in respect of the period prior to January 1, 1902, and the adjustment of accounts in respect thereof, and such demised premises are to be deemed to have been held since December 31, 1901, upon the terms and conditions expressed in this lease.

SEVENTH. In case default shall be made by the party of the second part in the fulfillment of its obligations hereunder, and such default shall continue for the period of ninety days after written notice of such default shall have been given by the party of the first part, its successors or assigns, to the party of the second part, its successors or assigns, then and in any such event the party of the first part, its successors and assigns, may thereupon and without demand or other formality, enter upon and take possession of all and singular the demised premises with their appurtenances, and it or they thereafter shall be entitled to hold, retain and enjoy the same as of its original estate therein, and notwithstanding such entry said party of the second part, its successors and assigns, shall be liable to said party of the first part, its successors and assigns, for any and all damages in any wise resulting from the non-fulfillment of its agreements hereunder, or from any wrongful acts or omissions of said party of the second part, its successors or assigns, in respect to the demised premises or any part thereof.

EIGHTH. This indenture may be at any time modified in any of its terms or provisions or canceled by agree-

ment of the parties thereto; and it is further agreed between the parties hereto that if at any time it appears that by the operation of this agreement either party is being benefited at the expense of the other, then this agreement shall be revised and changed so that such will not be the operation thereof, and if the parties hereto cannot agree upon the changes necessary to that end, then each party shall appoint one arbitrator and the two arbitrators so chosen shall choose a third arbitrator, and the award and decision in writing of such arbitrators, or a majority of them, shall be binding upon the parties hereto and this agreement shall be revised and changed in accordance with such award and decision and as so revised and changed shall be duly executed in writing by the parties hereto.

IN WITNESS WHEREOF, The parties hereto have hereunto respectively affixed their corporate seals and caused these presents to be signed by their respective Presidents or Vice-Presidents, and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

SOUTHERN PACIFIC RAILROAD COMPANY,

(Signed) By Charles H. Tweed,  
*Vice-President.*

(Seal, S. P. R. R. Co.)

Attest:

(Signed) Alex. Millar,  
*Assistant Secretary.*

SOUTHERN PACIFIC COMPANY,

(Signed) By E. H. Harriman,  
*President.*

(Seal, S. P. Co.)

Attest:

(Signed) Alex. Millar,  
*Secretary.*

59 Q.—Exhibit No. 9.

SOUTHERN PACIFIC COAST RAILWAY COMPANY.

LEASE

TO

SOUTHERN PACIFIC COMPANY.

Dated July 1, 1887.

*This Indenture*, Made this first day of July, A. D. 1887, between the South Pacific Coast Railway Company, a corporation created by and organized under the laws of the State of California, party of the first part, and the Southern Pacific Company, a corporation created by and organized under the laws of the State of Kentucky, party of the second part.

WHEREAS, the party of the first part is the owner of a certain ferry line between the City and County of San Francisco, and the City of Alameda, and certain steam ferry-boats used thereon, and of a railroad commencing at the eastern terminus of its said ferry in the Bay of San Francisco, and running through the City of Alameda and through the County of Alameda, the County of Santa Clara and the County of Santa Cruz to the Town of Santa Cruz, forming with said ferry a continuous line from San Francisco to Santa Cruz, and of various branches thereof, and also of a line of railroad from said City of Alameda to the City of Oakland, and of certain telegraph lines, all of said property being in the State of California; and

WHEREAS, the party of the second part has issued its bonds of even date herewith, payable in fifty years, to the amount of five million five hundred thousand dollars,

with interest thereon at the rate of four per cent. per annum, both principal and interest payable in United States gold coin of the present standard and fineness, and has secured the same by a mortgage or deed of trust upon all its franchises and corporate property to the Farmers' Loan and Trust Company, a corporation formed and organized under the laws of the State of New York; and

WHEREAS, the party of the second part desires to make an agreement to run, use, operate, and maintain the said ferries and the said railways and telegraph lines, and all the appurtenances thereunto belonging; and

WHEREAS, the party of the first part is of the opinion that it is for the interest of its bond and stockholders that the said ferries, railways, telegraph lines and all its other corporate property should be leased to the party of the second part, upon the terms and conditions hereinafter provided:

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

FIRST. That the party of the first part, for and in consideration of the covenants, agreements and guarantees hereinafter contained on the part and behalf of the party of the second part, its successors and assigns, to be kept and performed, has granted, demised and to farm let, and by these presents does grant, demise and to farm let, unto the said party of the second part, its successors and assigns, for the term of fifty-five years, from the 1st day of July, 1887. all and singular the railroad, ferries and telegraph lines of the party of the first part, that is to say:

1. All that certain railroad belonging to the party of the first part, known as the South Pacific Coast Railway, and running from and along the wharf and mole of the said party of the first part, in the Bay of San Francisco, in the County of Alameda, State of California, to the City of Santa Cruz, in the County of Santa Cruz, in said State, through the counties of Alameda, Santa Clara, and Santa Cruz, also to the town of Boulder Creek, in said

County of Santa Cruz, and also from Campbell's station, in the County of Santa Clara, to a point at or near the works of the Quicksilver Mining Company, in said County of Santa Clara; also through Oakland township, in said County of Alameda, and including a spur-track of two and a half miles in length from Newark to Centreville, in said County of Alameda, and also including all branches and side-tracks intersecting and connecting with said road and owned by the party of the first part, and being all the railroads now owned or operated by the party of the first part in the State of California, together with all the rights of way and telegraph lines thereto pertaining;

And also all the lands, gravel-pits, rock-quarries, rights of way, depot-buildings, depot-grounds, station-houses, station-grounds, and all wharves, piers, moles, slips and landings, water and riparian rights, water-tanks, machine shops, work-shops, stationary engines, machinery and fixtures, enginehouses, warehouses, offices and all other buildings, structures and improvements of every nature and kind whatsoever, with the appurtenances thereunto belonging, now held or owned, or which may at any time hereafter during the term of this lease be acquired by the party of the first part, for use in connection with the said ferry, railroad and branches, or the business thereof;

Also all the rolling stock and equipment of said railroad and branches, all locomotive engines and tenders, passenger and freight cars, hand-cars, and cars of every description, and all steamboats, ferry-boats, vessels and other water-craft, and their engines, boilers, machinery, tackle, equipment, apparel and furniture, and tools, instruments, apparatus and all other things, real or personal, belonging to the party of the first part, and used or intended to be used in operating, repairing, or maintaining the said ferry, railroad and branches, or their appurtenances.

And also the exclusive right during the term of this lease to engage in the business of transporting the mails, passengers and freight on said railroad and its branches, spurs, lateral extensions, and upon said ferry, at such rates and charges for such transportation and other services connected therewith, as the party of the second part may from time to time establish, and to collect and receive, for its own use, the said rates and charges, and to have, hold, exercise, and enjoy all the rights, powers, privileges and franchises which can be lawfully exercised and enjoyed in or about the said railroad, ferries and other demised premises, and the management, control, and operation of the same, as fully, amply, and entirely as the same might or could have been held, exercised or enjoyed by the said party of the first part, had this indenture not been made.

To have and to hold, the said railroads and branches, spurs, laterals and extensions, with the appurtenances and the said ferry with all the privileges thereunto appertaining, and the said telegraph lines, and all real and personal estate, rights, liberties, and privileges hereby granted, unto the said party of the second part, its successors and assigns, from the first day of July, one thousand eight hundred and eighty-seven, for and during the full term of fifty-five years then next ensuing.

SECOND. That the party of the first part, for the considerations aforesaid, hereby covenants and agrees to and with the party of the second part, that at the beginning of the term hereby granted, on the first day of July, 1887, it will assign, transfer and deliver to the said party of the second part, for its use, all the stores, supplies and materials of every kind, and all other goods, chattels and effects then in the possession of, or belonging to the said party of the first part, acquired for use upon or in connection with its said ferry, railroad, and telegraph lines, not hereinbefore specified.

And the party of the first part further covenants and agrees to and with the party of the second part, that it will, during the continuance of this lease and of the term hereby granted, maintain its corporate organization and existence by the annual election of directors and officers, and the performance of such other acts as may be required by law for that purpose.

THIRD. That the said party of the second part, for and in consideration of the above-mentioned grants, covenants and agreements, for itself, its successors, and assigns, hereby covenants and agrees to and with the said party of the first part in manner following:

1. That it will, during the continuance of this lease, preserve and maintain the said demised premises and property in as good condition as the same are now at the beginning of the term hereby granted, and keep the said railroad of the party of the first part, and the branches, spurs, laterals and extensions thereof, and the ferryboats, wharves, moles, piers, slips and telegraph lines in such condition that the same may be efficiently operated for the transportation of the mails and of passengers and freight, and that in the conduct and management of the said railroad it will conform in all respects to the charter obligations of the said party of the first part, as required by the Statutes of the State of California, and to such obligations as are or may be lawfully imposed upon the said party of the first part as a common carrier, and that it will indemnify the said party of the first part, and save it harmless from any action or suit, either by the said State, or by any person or corporation, arising out of or founded upon any act or omission of the party of the second part, in or about the management or operation of the said railroad and ferries and other property herein demised.

2. That it will during the term hereby granted, continue to run the said railroads and every part thereof, and the ferries connecting the same with the City and

County of San Francisco, and that during said term the service to be rendered upon said railroads and ferries shall be at least equal to the service rendered by the party of the first part at the time of making this lease.

3. That it will, during the continuance of this lease, punctually pay or cause to be paid all taxes and assessments that may be lawfully levied, charged or assessed on said demised premises, or any part thereof or any interest therein, and upon the steam ferry-boats and said other property by national, state, municipal or other legal authority, or upon the party of the first part as owner of said demised premises, or upon its capital stock.

4. That it will pay all expenses and charges incident to the operation and running of said railways, ferry, and telegraph lines, or to the ownership thereof, and that it will not do or suffer anything to be done by which any lien can be created upon said party of the first part or its property, or any portion thereof, and will indemnify the party of the first part of and from any statutory or other lines that may in any way arise or may be created thereon.

5. That it will, during the continuance of this lease, pay as rent for the said demised premises, including said ferry-boats and telegraph lines, an annual sum equivalent to four per cent. on the five million five hundred thousand dollars of the bonded debt of said party of the first part, secured by a mortgage on the said demised premises and every part thereof; that is to say, the sum of two hundred and twenty thousand dollars per annum, in the gold coin of the United States, of the present standard and fineness, in semi-annual installments on the thirty-first day of December, and the thirtieth day of June of each year, to be used by the party of the first part in paying the interest on the said bonds, and that from and after the first day of July, one thousand nine hundred and twelve, the said party of the second part shall further pay as rent for the said demised premises a further sum

annually of two hundred and twenty thousand dollars, in the like gold coin in four equal quarterly payments, viz.: on the thirtieth day of September, the thirty-first day of December, the thirty-first day of March, and the thirtieth day of June, and said payments are to be made to The Farmers' Loan and Trust Company in the City of New York, the trustee named in the mortgage, to secure the said bonds issued by the party of the first part, or to its successor in the trust; which said payments shall be used for and constitute a sinking fund for the redemption of the said five million five hundred thousand dollars of said bonds issued by the party of the first part, such payments to continue at the times hereinbefore specified, until the payments previously made shall, with the interest earned thereon, and the accretions thereto be sufficient to fully pay and redeem said bonds, also that it shall and will during said period, keep and maintain an office for the transaction of the business of the party of the first part, both in the City of New York and in the said City and County of San Francisco.

FOURTH. The party of the second part covenants and agrees with the said party of the first part, and with the holders of the said bonds issued as aforesaid by the party of the first part, and in consideration of the making of this lease, that it will and hereby does guarantee to the said party of the first part, and to the holders of its said bonds, the due and punctual payment of the interest and principal thereof, according to the true intent and meaning thereof; and the said party of the second part further agrees that it will execute on all of said bonds a guarantee in the following form:

#### FORM OF GUARANTEE.

"The Southern Pacific Company, the lessee of the railway and property of the South Pacific Coast Railway Company, the within mentioned promisor, in consideration of said lease and for value received, hereby guaran-

tees the punctual payment of the principal and interest of the within bond, at the time and place and in the money therein specified, and in case of default of the said promisor, covenants to pay the said principal and interest of the within bond as the same shall become due, upon the demand of the holder hereof.

"And the said Southern Pacific Company further covenants with the holders of this bond that it will during the term of the lease executed to it by the said South Pacific Coast Railway Company, prior to the payment of this bond, maintain and keep the said leased property in good, serviceable order and condition, and will operate the same in accordance with the terms of said lease.

"IN WITNESS WHEREOF, the said Southern Pacific Company has caused its corporate seal to be hereto affixed and attested by its Secretary, and this instrument to be signed by its President or one of its Vice-Presidents, this first day of July, 1887."

But it is distinctly understood and agreed between the parties hereto, that the said party of the second part, for the considerations aforesaid expressly waives all recourse, claim or demand against the stockholders or any of them of the said party of the first part for any sums of money it may pay to the said bondholders or for any matter or thing arising or to arise from the making of the said guarantee or the performance of the same.

FIFTH. It is further covenanted and agreed, that an inventory of the property of the party of the first part pertaining to said railways, ferry, and telegraph lines, and of all its corporate property, shall be made at the time of taking possession thereof, by said party of the second part; and all such property, at all times during the continuance of this lease, shall be maintained in good order and condition, by repairs or substitution, at the expense of the said party of the second part, and that in all such repairs and substitutions, and in the maintenance and equipment of said railways, ferry and telegraph lines

during said term, the same shall be at all times kept up and maintained as to the construction and equipment, in as perfect a state and condition as well equipped and well managed railways, ferries, and telegraph lines are usually kept up and maintained, having due regard to improvements that may be hereafter adopted in the construction and equipment thereof. And all improvements, betterments, additions or repairs made or added to the said leased property, or upon any part thereof by said party of the second part, and all equipments, steamboats, tools or other appliances which shall be purchased or constructed for the operation of the same, or to replace any such property which may be worn out, wrecked, or destroyed, shall be the property of the party of the first part without any lien or encumbrance being placed or suffered thereon by the party of the second part, but all such property shall be subject to the lien of the said mortgage executed by the party of the first part to The Farmers' Loan and Trust Company, and upon the end of the term hereby granted, or its sooner termination, as herein provided, shall be delivered to the party of the first part.

SIXTH. It is distinctly covenanted and agreed between the parties hereto, that this lease is made subject to the terms and lien of the said mortgage or deed of trust, executed by said party of the first part to the said Farmers' Loan and Trust Company as trustee, and that the terms of this lease shall not, prior to the payment of the said bonds, be in any manner changed or altered so as to impair the security of the said mortgage or deed of trust, without the written consent of a majority in amount of the said bondholders.

SEVENTH. It is further covenanted and agreed between the parties hereto, that in case said party of the second part shall fail to keep any of its covenants or agreements herein made, for thirty days after written notice from the party of the first part, or from the trustee of the said mortgage, of such failure or default, then

and in such case the lease hereby given shall thereupon, at the option of the said trustee, or after the payment in full of said bonds and the satisfaction of said mortgage, at the option of the said party hereto of the first part, but not otherwise terminate; and the party of the first part shall thereupon have the right to enter and may forthwith enter upon all and singular the property and premises embraced herein, without let or hindrance from said party of the second part, and the said party of the first part, or the said trustee, may take such other and further action for the enforcement of the provisions of this agreement as to it may seem advisable; and the party of the second part shall, notwithstanding, be and remain liable and responsible to the said party of the first part, and to the said trustee, for any and all damages caused by its default.

EIGHTH. It is further covenanted and agreed between the parties hereto that this lease, and all the covenants and conditions herein contained, shall be applicable to and binding upon their respective legal representatives and successors.

IN WITNESS WHEREOF, the party of the first part and the party of the second part have hereto set their respective corporate seals, and each has caused these presents to be signed by its President and attested by its Secretary, on the day and year first above written, in duplicate.

SOUTH PACIFIC COAST RAILWAY COMPANY,

(Seal.)

By James G. Fair,  
*President.*

Attest:

By Chas. S. Neal,  
*Secretary.*

SOUTHERN PACIFIC COMPANY,

(Seal.)

By Leland Stanford,  
*President.*

Attest:

By Timothy Hopkins,  
*Secretary.*

EXHIBIT No. 10.

Southern Pacific Railroad Company,  
(of California)

First Party.

New Mexico & Arizona Railroad Company,  
Second Party.

Sonora Railway Company, Limited,  
Third Party.

The Atchison, Topeka & Santa Fe Railway  
Company,  
Fourth Party.

Southern Pacific Company,  
Fifth Party.

Indenture of Lease and Contract.

Dated July 15, 1898.

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An indenture made this 15th day of July A. D. 1898, by and between the Southern Pacific Railroad Company, a corporation created, organized, and existing under the laws of the State of California, (herein called the California Company) of the first part, the New Mexico and Arizona Railroad Company, a corporation created, organized, and existing under the laws of the Territory of Arizona, (herein called the Arizona Company) of the second part, the Sonora Railway Company, limited, a corporation created, organized, and existing under the laws of the State of Massachusetts, (herein called the Sonora Company) of the third part, The Atchison, Topeka & Santa Fe Railway Company, a corporation created, organized, and existing under the laws of the

State of Kansas, (herein called the Atchison Company) of the fifth part, and the Southern Pacific Company, a corporation created, organized, and existing under the laws of the State of Kentucky, (herein called the Southern Company) of the fifth part.

*Whereas*, The parties of the first, second, and third parts are respectively the owners of the following properties, that is to say:

A. The California Company, of the line of railway in the State of California, about 242 miles in length, commencing at the junction thereof at or near the Needles in the State of California, with the railroad formerly of the Atlantic & Pacific Railroad Company, and running thence in a westerly direction to the easterly margin of the grounds or yards of the said California Company, used in connection with the Mojave Junction Station, or in connection with the main line of road of said California Company, between Goshen and Yuma, together with the right of way of said California Company therefor, two hundred feet in width, and the switches, siding, and turn-outs, station grounds, water rights, and the station building section houses and turn-tables appurtenant to said line of railway, and the other appurtenances thereto (except that this description is not to be construed to include any appurtenances to said line of railway, if such there be, which may have been constructed or acquired since the 20th day of August, 1884, and do not belong to said California Company, nor to include any equipment of the California Company, nor to interfere with the right of way and grounds and yards of the California Company at the said Mojave Junction or for said main line of road of said California Company between Goshen and Yuma).

B. The Arizona Company, of a line of railway and telegraph commencing at a junction with the railroad of the Southern Pacific Railroad Company (of Arizona) at or near Benson, in the Territory of Arizona, and running

thence in a southerly and westerly direction to a junction with the line of railway owned by the Sonora Company at the boundary between the Territory of Arizona and the Republic of Mexico, together with the right of way of said Arizona Company therefor, two hundred feet in width, and the switches, siding, and turnouts and the station building section houses, turn-tables, and other appurtenances to said line of railway.

C. The Sonora Company, of a line of railway and telegraph commencing at a junction with the above mentioned railway of the Arizona Company, at the boundary between the Territory of Arizona and the Republic of Mexico, and running thence in a southwesterly direction to a point at or near the City of Guaymas, in said Republic of Mexico, together with the right of way of said Sonora Company therefor, two hundred feet in width, and the switches, sidings, and turnouts, and the station building section houses, turn-tables, and other appurtenances to said line of railway, including the equipment therefor mentioned in the Schedule bearing even date herewith signed by the Sonora Company, and the Southern Company, also including the warehouses, mole, dock, and other terminal properties of the Sonora Company, at or near said Guaymas; and

*Whereas*, The Atchison Company is the owner of all the shares of the Capital Stock (except shares required to qualify directors) and of all the bonds of the Arizona Company, and of the Sonora Company, respectively; and

*Whereas*, The Southern Company is the owner of a large majority of the shares of the Capital Stock of the California Company; and

*Whereas*, Simultaneously with the execution of these presents and under even date herewith the said Sonora Company has executed an Indenture of Lease to the Southern Company of the properties of the Sonora Company, which are described in subdivision C. of the first

recital of this Indenture, to which Indenture of Lease (hereinafter called the Sonora Lease) reference is hereby made for the contents thereof; and

*Whereas*, The parties hereto have agreed together as hereinafter stated:

*Now, therefore, this Indenture witnesseth*, That in consideration of the premises, and the mutual undertakings and agreements hereinafter stated, and other good and valuable considerations, the receipt whereof is hereby acknowledged, the parties hereto have undertaken, covenanted, and agreed and do by these presents undertake, covenant, and agree to and with each other as follows, that is to say:

#### ARTICLE I.

Sec. 1. The California Company has agreed to lease and demise to the Atchison Company, and the Atchison Company has agreed to hire from the California Company, on the terms and conditions hereinafter set forth, the line of railway and other properties owned by the California Company, described in subdivision A of the first recital of this Indenture (hereinafter sometimes referred to as the Mojave Division), and the franchises appertaining thereto, such leasing and hiring to commence when the term by said Sonora lease granted shall commence, and the lease of the said Mojave Division, to the Atlantic & Pacific Railroad Company, under agreement between said California Company, said Atlantic & Pacific Railroad Company, the St. Louis & San Francisco Railway Company, and the Atchison, Topeka & Santa Fe Railroad Company, dated August 20, A. D., 1884, shall have lawfully terminated, and to continue until the 1st day of September, 1879, at and for the aggregate annual rental of \$218,133 in gold coin of the United States of America of the present standard of weight and fineness, payable by the Atchison Company in semi-annual pay-

ments of \$109,066.50 each during the continuance of the term by this article of this indenture agreed to be created and the final payment to be made at the termination thereof, but pro rata in amount according to the time elapsed subsequent to the maturity of the last semi-annual payment; and the Atchison Company has agreed, and by these presents does agree to and with the California Company, that it, the said Atchison Company, will pay semi-annually during the continuance of such term, as rental for said railway, and other properties hereby demised, the sum of \$109,066.50 gold coin of the United States as aforesaid, the first such payment to be made sixth months from the day when such term shall commence, and subsequent payments to be made six months thereafter, and that it will make a final payment at the termination of said term, to the amount above prescribed for such final payment, and the Atchison Company has agreed, and by these presents does agree to and with the California Company that it, the said Atchison Company, will further promptly pay and discharge all taxes and assessments which during said term shall become due upon said line of railway and other properties, or any part thereof, or which may become in anywise due or owing in respect of the same (due apportionment, however, being made in respect to any portion of the period for which such taxes or assessments are levied which may not be included in such term, and the California Company paying the pro rata share of such taxes or assessments for any portion of such period); and in case at any time the line of railway and other properties agreed to be leased by this Article of this Indenture shall not be taxed or assessed separately, but shall be taxed or assessed with other lines of railway and properties of the said California Company, or its successors or assigns, then and in that event the taxes or assessments due upon or in respect of said lines of railway and other properties agreed to be leased by this Article shall be deemed and

taken to be the same proportionate part of the tax or assessment so imposed upon the same, and such other properties taken together, as the then last preceding separate tax or assessment imposed upon the line of railway, and other properties by this Article agreed to be leased was of the corresponding aggregate of the taxes or assessments which shall have been so theretofore imposed upon all the lines of railway and properties which have been so subsequently taxed or assessed together, but if the length of the lines of railway so taxed or assessed together shall be greater than the length of those included in such last preceding separate taxes or assessments, then there shall be deducted from the total tax or assessment upon the properties taken together a pro rata reduction on the basis of mileage for the additional lines of railway included in such combined tax or assessment before the proportionate part of such tax or assessment to be paid by the Atchison Company is fixed and determined as hereinbefore prescribed.

The California and the Southern Companies agree that if either of them is required during the continuance of the lease of said Mojave Division hereunder to make return of the said Mojave Division to the State Board of Equalization for assessment by it, then it or they will return said Mojave Division separately from the other lines and property owned and operated by such companies respectively if at the time of such return there be any law in force permitting such separate return to be made.

The Atchison Company further agrees with the California Company that it, the said Atchison Company, will, and its successors and assigns shall maintain, repair, and replace such lines of railway and other properties hereby agreed to be leased so that the same at all times shall be and remain in substantially as good plight and condition as that in which they now are, the nature and character of the property being considered.

Sec. 2. The Atchison Company further agrees with the California Company that all times during the continuance of such term it will operate, use, and maintain the said demised premises as required by law, and will comply with and perform all legal requirements with respect to the use and operation of said demised premises, and will not do or omit any act or thing which might subject said demised premises or any part thereof (except the interest therein of the lessee) to any lien or charge which might subject the California Company, its successors, or assigns to any legal penalty or damage, or cause forfeiture of the demised premises or any part thereof.

The Atchison Company further agrees that at all times it will and its successors and assigns shall indemnify and save harmless the California Company, its successors and assigns from and against all damages and liabilities whatsoever that may be incurred or occasioned or suffered to be created by the Atchison Company, its successors or assigns, in the possession, maintenance, use, or operation of the demised premises.

Sec. 3. The Atchison Company, its successors or assigns, at any and all times during the continuance of the lease by this Article of this Indenture created at its or their own cost and expense, and upon proper indemnification of the California Company, its successors or assigns, may use the name of the California Company to defend possession of the demised premises against others than the California Company, its successors or assigns, and to acquire rights of way for the railway above described in case of change in the alignment thereof, and to construct or acquire additional sidings and stations and facilities for the conduct of the business of said railway. In case the Atchison Company, its successors or assigns shall be evicted from the demised premises by paramount title, then and in that event the California Company, its successors or assigns will pay to the At-

chison Company, its successors or assigns, the fair value at the time of such eviction of any additional sidings along the line of such railway, and any additional buildings, structures, and machinery along said line necessary or proper for the operation of the road which may have been constructed or acquired by the Atchison Company, its successors or assigns, after the day of the date of these presents, and before such eviction.

Sec. 4. In case default shall be made in the payment of any installment of said rental at the time hereinbefore stipulated for the payment thereof, and such default shall continue for thirty days, or in case default shall be made in the performance of any other of the agreements of the Atchison Company under this indenture, and any such default shall continue for the period of thirty days after written notice of such default shall have been given by the California Company, its successors or assigns, to the Atchison Company, its successors or assigns, then and in any such event the said California Company, its successors or assigns, may thereupon, and without demand or other formality, enter upon and take possession of all and singular the demised premises with their appurtenances, and it or they thereafter shall be entitled to hold, retain, and enjoy the same as of its original estate therein, but notwithstanding such entry, he said Atchison Company, its successors and assigns shall be liable to said California Company, its successors and assigns, for any and all damages in any wise resulting from the non-fulfillment of its said agreements, hereunder, or from any wrongful acts or omission of said Atchison Company, its successors or assigns, in respect to the demised premises or any part thereof.

Sec. 5. During the continuance of this lease of said demised premises to the Atchison Company, the rent reserved being paid, and all other terms of said lease being fulfilled, the California Company will warrant and defend the peaceful occupation and enjoyment of said demised

premises, and of every part thereof to the Atchison Company, its successors or assigns, against the lawful claims of all persons, and will permit the Atchison Company to make a physical connection between the track of the line of railway leased hereby, and the track of the California Company at the easterly margin of the grounds or yards of the said California Company used in connection with its Mojave station.

Sec. 6. The Atchison Company agrees that the expiration or other termination of the term for which the said premises are demised by this Article of this Indenture it will surrender the said premises hereby demised in substantially as good condition as when received, the nature and character of the property being considered.

Sec. 7. The rentals payable by the Atchison Company to the California Company under the lease created by this Article of this Indenture are hereby assigned and transferred by the California Company to the Southern Company, and directed to be paid by the Atchison Company to the Southern Company.

Sec. 8. It is agreed between the Atchison Company and the California Company that in case the Atchison Company, its successors or assigns, by reason of any default by the California Company, its successors or assigns, should fail to acquire, or having acquired should be deprived of or lose possession of said Mojave Division so agreed to be leased to it or any substantial part thereof, then at the election of said Atchison Company, its successors or assigns, it or they may, by simple notice delivered to the president or secretary of the California Company, or if there be no president or secretary, then to the latest incumbent of either of such offices, terminate its or their lease or hiring of said Mojave Division so agreed to be leased to it, and upon such termination of such lease or hiring, any and all its obligations in respect of such Mojave Division or other properties referred to in this Article, and in respect to rental therefor

(except pro rata rental to the time when it shall have so terminated its lease or hiring thereof) and any other obligations assumed by said Atchison Company under this Article shall forthwith cease and determine; and in that event the California Company will forthwith pay to the Atchison Company the fair value, at the time of the giving of such notice, of any and all betterments and improvements to said line of railway, and its appurtenances or any part of the demised premises which shall have been theretofore made thereto by the said Atchison Company; but the Atchison Company shall not voluntarily surrender possession of the demised premises, or any part thereof to others claiming paramount title or adversely claiming possession, and in case any suit or proceeding shall be instituted to deprive the Atchison Company, its successors or assigns of such possession, then it or they shall forthwith give notice of such suit or proceeding to the California Company, its successors or assigns, and shall permit the California Company, its successors or assigns, at its or their own cost and expense (if it or they should elect so to do), to defend such suit or proceeding, or to acquire or perfect the title or right of possession to such time or part thereof.

Sec. 9. Any portion of the demised premises appurtenant to the said line of railway, now held or which may be acquired for any purpose incidental to the operation thereof, such as premises easterly of the easterly margin of the grounds or yards of the California Company at Mojave Junction acquired or held for the purposes of stations, depots, shops, or other buildings, or for obtaining gravel, fuel, or other materials, for use or sale, which in the judgment of the Atchison Company, its successors or assigns, shall be no longer requisite for use for the purpose for which the same shall have been acquired or used, and likewise any part of the tract, sidings, or roadway which shall have been thrown out of use by reason of straightening or alteration of the line of road, and any

rails, ties, or other materials constituting a part or parts of the said line of railway for which other materials of at least equal value shall have been substituted, may be sold or disposed of by the Atchison Company, its successors or assigns, as may be authorized by law; but the proceeds of any such sale shall be applied to the betterment or improvement or repayment of expenses incurred in the betterment or improvement of the remainder of the demised premises, or the payment or reimbursement of payment for said substituted materials, or in the acquisition of other property, which forthwith shall be transferred to the California Company, its successors and assigns, in exchange for the property sold, and shall become subject to the operation of this lease.

Sec. 10. The said lease and the agreements of the California Company and the Atchison Company in this Article contained are, however, subject to the express condition that at the election of the California Company, or its successors or assigns, the lease of said demised premises shall cease and terminate in case the Atchison Company, the Arizona Company, and the Sonora Company, or either or any of them, shall make default in the performance of any of their agreements under this Indenture, or under the Sonora lease hereinbefore mentioned, and any such default shall continue for sixty days after notice in writing of such default and of such election shall have been given by the California Company, or its successors or assigns, or the Southern Company, or its successors or assigns to the Atchison Company, or its successors or assigns, provided, however, that neither the Atchison Company, the Arizona Company, nor the Sonora Company shall be deemed in default of their agreements by reason of a failure to carry out the same in case such failure shall be caused by a default of the California Company, or the Southern Company, to perform its agreements under this Indenture and provided further that in no event shall a re-entry by the California

Company, its successors or assigns, upon the demised premises, or an election of said Company, or its successors or assigns, to re-enter under Section 4 of this Article for condition broken, or the termination of the lease of said demised premises, or an election of the California Company, its successors or assigns, to terminate the same, under this present section, terminate the lease by the Arizona and Sonora Companies to the Southern Company of the lines of railway and other properties referred to in Article II of this Indenture and in the said Sonora lease, or in any manner affecting the agreements of the Arizona and Sonora Companies under this Indenture, or under which Sonora lease, or the agreements of the Atchison Company hereunder, except so far as such re-entry or election to re-enter or termination of this lease to the Atchison Company, or election to terminate the same, shall directly affect the relations of the lessor and lessee in respect to the premises demised under this Article of this Indenture.

Sec. 11. It is understood and agreed between the parties hereto that no land granted to the Southern Pacific Railroad Company, of California, by the Acts of Congress, approved July 27, 1866, and March 3, 1871, or either of such Acts, except only lands granted and used for rights of way and station grounds between The Needles and the easterly margin of the grounds or yards of the California Company at Mojave Junction, are leased or demised, or agreed to be leased or demised, or in any wise affected by this Indenture.

## ARTICLE II.

Sec. 1. The Arizona Company has agreed to lease and demise to the Southern Company, and the Southern Company has agreed to hire from the Arizona Company on the terms and conditions hereinafter set forth, the line of railway and other properties owned by the Arizona

Company described in Subdivision 2 of the first recital of this Indenture, and the franchises appertaining thereto, such leasing and hiring to commence when the term by said Sonora lease granted shall commence, and to continue until the 1st day of September, 1879, at and for the aggregate annual rental of \$54,646.86 in gold coin of the United States of America, of the present standard of weight and fineness, payable by the Southern Company in semi-annual payments of \$27,323.43 each during the continuance of the term by this Article of this Indenture agreed to be created, and the final payment to be made at the termination thereof, but pro rata in amount according to the time elapsed subsequent to the maturity of the last semi-annual payment; and the Southern Company has agreed, and by these presents does agree, to and with the Arizona Company, that it, the said Southern Company, will pay semi-annually during the continuance of such term as rental for said railway and other properties hereby demised, the sum of \$27,323.43 in gold coin of the United States, as aforesaid, the first such payment to be made six months from the day when such term shall commence, and subsequent payments to be made each six months thereafter, and that it will make a final payment at the termination of said term to the amount above prescribed for such final payment, and the Southern Company has agreed and by these presents does agree to and with the Arizona Company, that it, the said Southern Company will further promptly pay and discharge all taxes and assessments which during the said term shall become due upon said line of railway, and other properties, or any part thereof, or which may become in any wise due or owing in respect of the same, due apportionment, however, being made in respect of any portion of the period for which such taxes or assessments are levied which may not be included in such term, and the Arizona Company paying the pro rata share of such taxes or assessments, for any such portion of such period, and will

maintain, repair, and replace such line of railway and other properties so that the same at all times shall be and remain in substantially as good plight and condition as that in which they now are, the nature and character of the property being considered.

Sec. 2. The Southern Company further agrees with the Arizona Company that at all times during the continuance of such term it will operate, use, and maintain the said demised premises as required by law and it will comply with and perform all legal requirements with respect to the use and operation of said demised premises, and will not do or omit any act or thing which might subject said demised premises of any part thereof (except the interest therein of the lessee) to any lien or charge, or which might subject the Arizona Company, its successors or assigns, to any legal penalty or damage or cause forfeiture of the demised premises, or any part thereof.

The Southern Company further agrees that at all times it will and, its successor and assigns, shall indemnify and save harmless the Arizona Company, its successors and assigns, from and against all damages and liabilities whatsoever that may be incurred or occasioned or suffered to be created by the Southern Company, its successors or assigns, in the possession, maintenance, use, or operation of the demised premises.

Sec. 3. The Southern Company, its successors or assigns, at any and all times during the continuance of the lease by this Article of this Indenture created, at its or their cost and expense, and upon proper indemnification of the Arizona Company, its successors or assigns, may use the name of the said Arizona Company to defend possession of the demised premises against others than the Arizona Company, its successors or assigns, and to acquire rights of way for the railway above described in case of change in the alignment thereof, and to construct or acquire additional sidings and stations and facilities

for the conduct of the business of said railway. In case the Southern Company, its successors or assigns, shall be evicted from the demised premises by paramount title, then and in that event the Arizona Company, its successors or assigns will pay to the Southern Company, its successors or assigns, the fair value at the time of such eviction of any additional siding along the lines of said railway, and any additional buildings, structures, and machinery along said lines necessary or proper for the operation of the road which may have been constructed or acquired by the Southern Company, its successors or assigns, after the day of the date of these presents and before such eviction.

Sec. 4. In case default shall be made in the payment of any installment of said rental at the time hereinbefore stipulated for the payment thereof, and such default shall continue for thirty days, or in case default shall be made in the performance of any other of the agreements of the Southern Company under this Indenture, and any such default shall continue for the period of thirty days after written notice of such default shall have been given by the Arizona Company, its successors or assigns, to the Southern Company, its successors or assigns, then and in any such event the said Arizona Company, its successors and assigns, may thereupon, and without demand or other formality, enter upon and take possession of all and singular the demised premises with their appurtenances, and it or they thereafter shall be entitled to hold, retain, and enjoy the same as of its original estate therein; but, notwithstanding such entry, said Southern Company, its successors and assigns, shall be liable to said Arizona Company, its successors and assigns, for any and all damages in anywise resulting from the non-fulfillment of its said agreements hereunder, or from any wrongful acts or omission of said Southern Company, its successors or assigns, in respect to the demised premises, or any part thereof.

Sec. 5. During the continuance of this lease of said demised premises to the Southern Company, the rent reserved being paid, and all other terms of said lease being fulfilled, the Arizona Company will warrant and defend the peaceful occupation and enjoyment of said demised premises, and of every part thereof, to the Southern Company, its successors and assigns, against the lawful claims of all persons; and so long as the undertakings and obligations of the Southern Company in this Indenture expressed shall be in all respects performed and fulfilled, the Arizona Company will not impose any additional lien by further mortgage, or otherwise, upon said demised premises or any part thereof.

Sec. 6. The Southern Company agrees that at the expiration or other termination of the term for which the said premises are demised by this Article of this Indenture, it will surrender the said premises hereby demised in substantially as good condition as when received, the nature and character of the property being considered.

Sec. 7. The rentals payable by the Southern Company to the Arizona Company under the lease created by this Article of this Indenture are hereby assigned and transferred by the Arizona Company to the Atchison Company, and directed to be paid by the Southern Company to the said Atchison Company.

Sec. 8. Inasmuch as the lines of railway of the Arizona Company and the Sonora Company hereinbefore referred to constitute and are intended to be leased by this Indenture and said Sonora lease, as constituting practically a continuous line of railway from Benson to Guaymas, it is agreed between the parties hereto that in case the Southern Company, its successors or assigns, by reason of any default by the Arizona Company, or the Sonora Company, or the Atchison Company, or any one or more of them, or their respective successors or assigns, shall fail to acquire, or having acquired, should by reason of any such default be deprived of or lose possession

of either of the lines of railway of said Arizona Company or of said Sonora Company so agreed to be leased to it, or any substantial part of either thereof, then, at the election of said Southern Company, its successors or assigns, it or they may by simple notice delivered to the President or Secretary of the Arizona or of the Sonora Companies, or if there be no President or Secretary of either of those companies, then to the latest incumbent of either of such offices, terminate its or their leases or hiring of both of said lines of railway and other properties so agreed to be leased to it; and, upon such termination of such lease or hiring, any and all its obligations in respect to the lines of other properties referred to in this Article or in such Sonora lease, and in respect to rental therefor (except pro rata rental to the time when it shall have so terminated its lease or hiring thereof), and any other obligations assumed by said Southern Company under this Article or under such Sonora lease, shall forthwith cease and determine, and in that event the Atchison Company will forthwith pay to the Southern Company (except so far as the Sonora or Arizona Companies may have previously paid the same) the fair value at the time of the giving of such notice of any and all betterments and improvements to said lines of railway or their appurtenances, or any part of the demised premises which shall have been theretofore made thereto by said Southern Company.

But the Southern Company shall not voluntarily surrender possession of the demised premises, or part thereof to others claiming paramount title or adversely claiming possession, and in case any suit or proceeding should be instituted to deprive the Southern Company, its successors or assigns, of such possession, then it or they shall forthwith give notice of such suit or proceeding to the Arizona Company, its successor or assigns, and shall permit the Arizona Company, its successors or assigns at its or their own cost and expense (if it or they

should elect so to do) to defend such suit or proceeding, or to acquire or perfect the title or right of possession to such line or part thereof.

Sec. 9. Any portion of the demised premises appurtenant to the said line of railway, now held or which may be acquired for any purpose incidental to the operation thereof, such as premises acquired or held for the purpose of stations, depots, shops, or other buildings, or for obtaining gravel, fuel, or other materials, for use or sale which in the judgment of the Southern Company, its successors or assigns, shall be no longer requisite for use for the purpose for which the same shall have been acquired or used, and likewise any part of the tract, sidings, or roadway which shall have been thrown out of use by reason of straightening or alteration of the line of road, and any rails, ties, or other materials constituting a part or parts of the said line of railway for which other materials of at least equal value shall have been substituted, may be sold or disposed of by the Southern Company, its successors or assigns, as may be authorized by law; but the proceeds of any such sale shall be applied to the betterment and improvement or repayment of expenses incurred in the betterment or improvement of the remainder of the demised premises, or the payment or reimbursement of payment for said substituted materials, or in the acquisition of other property, which forthwith shall be transferred to the Arizona Company, its successors and assigns, in exchange for the property sold, and shall become subject to the operation of this lease.

Sec. 10. The rentals payable by the Southern Company to the Atchison Company under the assignment and direction of Section 7 of this Article contained shall be received by said Atchison Company for the account and benefit of said Atchison Company, and shall by said Atchison Company be credited to said Atchison Company as payments on account of interest due to the Atchison Com-

pany upon the bonds of said Arizona Company held by the Atchison Company, and the coupons representing the amount of the interest so paid shall be canceled and surrendered to the Arizona Company; and in case there should be any surplus of such rental after paying all accrued interest on said bonds held by the Atchison Company, such balance shall be held by the Atchison Company for the account and subject to the order of the Arizona Company, its successors or assigns.

Sec. 11. The said lease and the agreements of the Arizona Company and the Southern Company in this Article contained are, however, subject to the express condition that, at the election of the Arizona Company, or its successors or assigns, the lease of said demised premises shall cease and terminate in case the California Company and the Southern Company or either of them shall make default in the performance of any of their agreements, under this Indenture, or under the Sonora lease, and such default shall continue for sixty days after notice in writing of such default and of such election shall have been given by the Arizona Company, or the Atchison Company, or their respective successors or assigns, provided, however, that neither the California Company or the Southern Company shall be deemed in default of their agreements by reason of a failure to carry out the same in case such failure shall be caused by a default of the Arizona Company, the Sonora Company or the Atchison Company to perform its agreements under this Indenture or under said Sonora lease; and provided, further, that in no event shall a re-entry by the Arizona Company, or its successors or assigns upon the demised premises, or an election of said Company or its successors or assigns to re-enter under Section 4 of this Article for condition broken, or the termination of the lease of said demised premises, or an election of the Arizona Company, its successors or assigns to terminate the same, under this present section, terminate the lease by the Cali-

for California Company to the Atchison Company of the line of railway and other properties referred to in Article 1 of this Indenture, or in any manner affect the agreements of the California Company under this Indenture, or the agreements of the Southern Company hereunder, or under said Sonora lease, except so far as such re-entry or election to re-enter or termination of this lease or election to terminate, the same shall directly affect the relations of the lessors and lessee in reference to the premises demised under this Article of this Indenture.

### ARTICLE III.

The Southern Company agrees with the Sonora Company that, at the election of the Sonora Company, its successors or assigns, said Indenture of lease executed by the Sonora Company to the Southern Company and the lease thereunder shall cease and terminate and the premises thereby demised shall be surrendered by the Southern Company to the Sonora Company, its successors or assigns, in case the California Company and the Southern Company, or either of them shall make default in the performance of any of their agreements under this Indenture, or under said Sonora lease, and any such default shall continue for sixty days after notice in writing of such default and of such election shall have been given by the Sonora Company or the Atchison Company, or their respective successors or assigns to the Southern Company, or its successors or assigns, provided, however, that neither the California Company nor the Southern Company shall be deemed in default of their agreements by reason of a failure to carry out the same in case such failure shall be caused by a default of the Arizona Company, the Sonora Company, or the Atchison Company to perform its agreements under this Indenture or said Sonora lease; and provided, further, that in no event shall a re-entry by the Sonora Company, or its

successors or assigns, upon the demised premises, or an election of said Company, or its successors or assigns, to re-enter, under said Sonora lease, for condition broken, or the termination of the lease of said demised premises, or an election of the Sonora Company to terminate the same, under this present Article, terminate the lease by the California Company to the Atchison Company of the line of Railway and other properties referred to in Article I of this Indenture, or in any manner affect the agreements of the California Company under this Indenture, or the agreements of the Southern Company under this Indenture or under said Sonora lease, except so far as such re-entry or election to re-enter or termination of said Sonora lease to the Southern Company or election to terminate the same, shall directly affect the relations of the lessors and lessee in reference to the premises demised under said Sonora lease.

#### ARTICLE IV.

The Atchison Company agrees that upon the written request of the California Company or its successors, at any time during the continuance of such lease of the Mojave Division, expressed in Article I hereof, the said Atchison Company and its successors and assigns will grant and lease to the California Company or its successors the right to use equally with the Atchison Company, its successors and assigns (but subject to the provisions hereinafter contained) during the continuance of such lease or for any term not less than five years in length which shall be specified by the California Company or its successors in such written request, such portion (not less than one hundred miles in length) of such Mojave Division and its appurtenances as the California Company, its successors or assigns, shall specify in such written request and as may be required to connect the main line of the railroad now of the California Company with any

railroad built or which may be built to or in the direction of Salt Lake City, Utah, the California Company, or its successors, in such case agreeing to pay, during the term for which such grant and lease is so requested, as rental therefor, the following sums, viz.: (1) Three Hundred and Seventy-five Dollars (\$375) per annum per mile of such portion of said Mojave Division, so specified in such written request; (2) one-half of all taxes and assessments imposed upon such portion of the Mojave Division during the term for which such grant and lease is requested, it being agreed that the taxes and assessments upon said portion of the Mojave Division shall be deemed and taken as a sum bearing the same ratio to all taxes and assessments upon the whole of said Mojave Division as the length of such portion thereof so specified in such written request bears to the length of said entire Mojave Division; (3) two and one-half per centum per annum upon the actual cash cost of any permanent betterments and additions which subsequent to the date hereof shall have been made or which while the California Company or its successors shall so use the same shall be made by the Atchison Company, its successors or assigns upon such portion of said Mojave Division; and (4) a share of the actual cost of maintenance during such period of a said portion of said Mojave Division bearing the same ratio to the total cost of maintenance of said portion of said Mojave Division during such period as the wheelage of the California Company, or its successors upon said portion of the Mojave Division shall bear to the whole wheelage thereon. Such rental (except such share of the taxes and assessments and of the cost of maintenance) shall be payable semi-annually, beginning at a date six months after the date when such grant and lease which, in pursuance of such written request of the California Company, or its successors, be made pursuant to this Article to the California Company, or its successors; such share of said taxes and assessments shall be payable

within thirty days after payment thereof shall have been made by the Atchison Company, its successors or assigns, and notification of such payment shall have been given by said Atchison Company, its successors or assigns, to said California Company, or its successors; and such share of the cost of maintenance of said portion of the Mojave Division shall be paid within sixty days after the Atchison Company, its successors or assigns, shall have delivered statements thereof to the California Company or its successors.

Such grant or lease shall contain the express provision that neither the California Company nor its successors shall on the portion of the Mojave Division so specified do any local business originating at and destined to points thereon, except if and when required by law so to do, and if required by law so to do, shall pay to the Atchison Company, or its successors 60 per centum of the local rates upon such local business; and the further provision that neither the California Company nor its successor shall receive or deliver passengers or freight at any point on such portion of the Mojave Division, except upon payment to the Atchison Company or its successors of 60 per cent. of the local rates at the time of transportation of such passengers or freight over the portion of the Mojave Division over which they shall be transferred, but such percentage may be altered by mutual agreement of the Southern Company and the Atchison Company, their respective successors or assigns. Such grant and lease shall further provide that in case the California Company, its successors or assigns, shall make default in the payment of such semi-annual installment of rental or of such portion of said taxes and assessments, or of such share of the cost of maintenance, or shall make default in the performance of any other of its agreements under said grant and lease or of any of its agreements under this Indenture, and any such default shall continue for the period of sixty days after written

demand for payment or performance shall have been made by the Atchison Company, then and in that event all right of the California Company, and its successors and assigns to use said portion of said Mojave Division, shall cease and terminate at the election of the Atchison Company, and the Atchison Company, its successors and assigns without demand or other formality, may exclude the California Company, its successors or assigns, wholly therefrom, and thereafter shall be entitled to hold, retain and enjoy the same of its or their original estate therein.

The rights of the California Company, or its successors under this Article and under such grant and lease may be assigned or sub-let to the Southern Company, or to any other company which for the time being, shall own, or, as lessee, operate the railroads of the California Company, or said main line thereof between Goshen and Yuma, but, except as aforesaid, the same shall not be assignable, except with the written consent of the Atchison Company.

#### ARTICLE V.

In case disagreements of any kind shall arise between any two or more of the parties hereto, as to any act or omission to act of any party under this agreement, or any damages claimed to have been suffered by reason of any violation thereof, then, at the request of either of said parties between whom such disagreements shall have arisen, an arbitrator shall be appointed by the Southern Company, a second arbitrator by the Atchison Company, and a third arbitrator shall be chosen by the two so appointed, and the decision of such arbitrators, or a majority of them, or any two of them given after a hearing, of which both parties shall be duly notified, and at which they shall have an opportunity to be heard, shall be final and binding upon both parties as to the matter or

matters in disagreement between them. In case of such arbitration each party to this agreement hereby covenants for itself, its successors and assigns, with each of the other parties to this agreement, and its successors and assigns, that it will forthwith upon the rendering of any decision as aforesaid, upon any arbitration to which it was a party, comply with and perform the requirements thereof, and pay any sum or sums of money which by such award it may be required to pay.

#### ARTICLE VI.

Except in the case mentioned in Article IV hereof, each and all of the covenants and conditions in this Indenture contained and the leasehold estates hereby granted shall inure to the benefit of the successors and assigns of the respective parties, and the covenants and conditions herein expressed shall bind the successors and assigns of the respective parties as fully as though the successors and assigns of the respective parties had in every instance been specifically mentioned and included.

#### ARTICLE VII.

The Atchison Company hereby guarantees the performance by the Arizona Company and the Sonora Company, respectively, and their respective successors and assigns, of all the covenants and agreements of the Arizona and Sonora Companies respectively, herein or in said Sonora lease; and the Southern Company hereby guarantees the performance by the California Company, and its successors and assigns, of all the covenants and agreements of the California Company herein contained.

#### ARTICLE VIII.

The rentals payable by the Southern Company to the Sonora Company under the Sonora lease are hereby as-

signed and transferred by the Sonora Company to the Atchison Company, and directed to be paid by the Southern Company to the Atchison Company; but the rentals so made payable by the Southern Company to the Atchison Company shall be received by said Atchison Company for the account and benefit of said Sonora Company, and shall by said Atchison Company be credited to said Sonora Company, as payments on account of interest due to the Atchison Company upon the bonds of the Sonora Company held by the Atchison Company, and the coupons representing the amount of the interest so paid shall be canceled and surrendered to the Sonora Company; and in case there should be any surplus of such rental after paying all accrued interest on said bonds held by the Atchison Company, such balance shall be held by the Atchison Company for the account and subject to the order of the Sonora Company, its successors and assigns.

#### ARTICLE IX.

All amounts which shall become due from the Atchison Company under this Indenture and all amounts which shall become due from the Southern Company under this Indenture and under the Sonora lease are hereby agreed to be offset against each other, and only the balance due from one company to the other after such offset shall be payable in cash, but if such offset can not legally be made, then the provision therefor herein contained shall no longer remain operative.

IN WITNESS WHEREOF the parties hereto have caused their respective corporate seals to be hereunto affixed, and attested by their respective Secretaries or Assistant Secretaries, and these presents to be signed by their respective Presidents, the day and year first above written.

SOUTHERN PACIFIC RAILROAD COMPANY,  
By C. P. HUNTINGTON, *President*.

{Corporate}  
 { Seal }

Attest:

F. H. DAVIS,

*Asst. Secretary.*

NEW MEXICO & ARIZONA RAILROAD COMPANY,

By E. P. RIPLEY, *President.*

{Corporate}  
 { Seal }

Attest:

L. C. DEMING,

*Asst. Secretary.*

SONORA RAILWAY COMPANY, LIMITED,

By E. P. RIPLEY, *President.*

{Corporate}  
 { Seal }

L. C. DEMING,

*Secretary.*

THE ATCHISON, TOPEKA & SANTE FE RAILROAD CO.

By E. P. RIPLEY, *President.*

{Corporate}  
 { Seal }

Attest:

L. C. DEMING,

*Asst. Secretary.*

SOUTHERN PACIFIC COMPANY,

By C. P. HUNTINGTON, *President.*

{Corporate}  
 { Seal }

I. E. GATES,

*Asst. Secretary.*

State of New York }  
 County of New York } ss.

On this 22nd day of July, in the year one thousand eight hundred and eighty-eight, before me, D. J. Sheehan, a Notary Public of the State of New York, in and for the County aforesaid, residing therein and duly commissioned and sworn, personally appeared Collis P. Huntington, personally known to me and known to me to be the President, and Frank H. Davis, personally known to me and known to me to be the Assistant Secretary of the Southern Pacific Railroad Company, the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same freely and voluntarily for the uses and purposes therein set forth.

And the said Collis P. Huntington, being then and there duly sworn, did depose and say that he resides in the State of New York and County of New York; and that he is the President of the Southern Pacific Railroad Company, the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that it was affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

IN WITNESS WHEREOF I have hereunto set my hand and fixed my notarial seal the day and year first above written.

D. J. SHEEHAN,  
*Notary Public in and for the County*  
*of New York, State of New York, No. 47.*

{ Notarial }  
 { Seal }

My commission expires Mar. 30, 1900.

State of New York }  
 County of New York } ss.

On this 15th day of July, in the year one thousand eight hundred and ninety eight, personally appeared before me, the undersigned, a Notary Public, within and for the County and State aforesaid, Edward P. Ripley, whose name is subscribed to the foregoing instruments, the said Edward P. Ripley being personally known to me, and personally known to me to be the President of the said New Mexico & Arizona Railroad Company, and acknowledged that the said instrument was signed, sealed and executed by the said Company as therein set forth, freely and voluntarily for the uses and purposes therein set forth.

And the said Edward P. Ripley, being then and there by me duly sworn, did depose and say that he resides in the State of Illinois and County of Cook; that he is the President of the New Mexico & Arizona Railroad Company, the corporation described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that it was affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Witness my hand and seal notarial on this 15th day of July, in the year of our Lord one thousand eight hundred and ninety eight.

D. J. SHEEHAN,  
*Notary Public for the County of*  
*New York, State of New York, No. 47.*

{ Notarial }  
 { Seal }

My commission expires Mar. 30, 1900.

State of New York }  
 County of New York } ss.

On this 15th day of July, 1898, before me the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Edward P. Ripley and L. C. Deming, the said Edward P. Ripley to me personally known and known to me to be the President of the Sonora Railway Company, Limited, and the said L. C. Deming to me personally known and known to me to be the Secretary of said Sonora Railway Company, Limited, and the said Edward P. Ripley and L. C. Deming being by me respectively duly sworn, did severally make oath and say that the said Edward P. Ripley is such President, and the said L. C. Deming is such Secretary of said Sonora Railway Company, Limited, the corporation described in and which executed the foregoing instrument; that they knew the corporate seal of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that they signed the foregoing instrument and affixed thereto the corporate seal of said corporation in its behalf by authority of its Board of Directors; and they severally acknowledged the said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal the day and year first above written.

D. J. SHEEHAN,  
*Notary Public for the County of New  
 York, State of New York, No. 47.*

{Notarial}  
 } Seal {

My commission expires Mar. 30, 1900.

State of New York }  
 County of New York } ss.

On this 15th day of July, 1898, before me the undersigned, a Notary Public for the State of New York in and for the County aforesaid, residing therein, and duly commissioned and sworn, personally appeared Edward P. Ripley and L. C. Deming, the said Edward P. Ripley and L. C. Deming being personally known to me and known to me to be respectively the President and Assistant Secretary of the Atchison, Topeka & Santa Fe Railway Company, the corporation which executed the foregoing instrument and acknowledged to me that such corporation executed the same freely and voluntarily for the uses and purposes therein set forth.

And the said Edward P. Ripley being then and there by me duly sworn, did depose and say that he resides in the State of Illinois, County of Cook; that he is the President of the Atchison, Topeka & Santa Fe Railway Company, the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that it was affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal the day and year first above written.

D. J. SHEEHAN,  
*Notary Public for the County of New  
 York, State of New York, No. 47.*

{ Notarial }  
 { Seal }

My commission expires Mar. 30, 1900.

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State of New York }  
County of New York } ss.

On this 22nd day of July, 1898, before me, the undersigned, A Notary Public of the State of New York in and for the County aforesaid, residing therein and duly commissioned and sworn, personally appeared Collis P. Huntington whose name is subscribed to the foregoing instrument as President of the Southern Pacific Company, and Isaac E. Gates, whose name is subscribed to the foregoing instrument as Assistant Secretary of said Company, the said Collis P. Huntington and Isaac E. Gates being personally known to me and personally known to me to be respectively the President and Secretary of said Southern Pacific Company, and severally acknowledged that the said instrument was signed, sealed and executed by the said Company as therein set forth freely and voluntarily for the purposes therein set forth.

And the said Collis P. Huntington, being then and there by me duly sworn, did depose and say that he resides in the State of New York, County of New York; that he is the President of the Southern Pacific Company, the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that it was affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal the day and year first above written.

D. J. SHEEHAN,  
*Notary Public for the County of New  
York, State of New York, No. 47.*

{ Notarial }  
{ Seal }

My commission expires Mar. 30, 1900.

59 Q.—Exhibit No. 11.

SONORA RAILWAY COMPANY, LIMITED.

TO

SOUTHERN PACIFIC COMPANY.

LEASE.

Dated July 15, 1898.

*This Indenture*, made the 15th day of July, A. D. 1898, between the Sonora Railway Company, Limited, a corporation organized and existing under the laws of the State of Massachusetts (herein called the "Sonora Company"), party of the first part, and the Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky (herein called the "Southern Company"), party of the second part,

WITNESSETH as follows:

I. The Sonora Company has agreed to lease and demise unto the Southern Company, and the Southern Company has agreed to hire from the Sonora Company, on the terms and conditions hereinafter set forth, the line of railway of the Sonora Company, from the point of commencement thereof in or about the City of Guaymas in the Republic of Mexico, and extending thence in a northeasterly direction to a point of connection with the railroad of the New Mexico and Arizona Railroad Company at the boundary line between the said Republic of Mexico and the Territory of Arizona, together with the right of way of said Sonora Company therefor, and the telegraph line, or rights of the Sonora Company in and in respect to the telegraph line, upon or appurtenant to its line of railway (subject to existing contracts and arrangements

affecting said telegraph line); together with the switches, sidings, and turnouts, and the station buildings, section houses, turntables, and other appurtenances of said line of railway, and all engines, cars, machinery, tools, and other equipment belonging to said Sonora Company, and the warehouses, mole, dock, and other terminal properties of the Sonora Company at or near said Guaymas, together with the rents, income, and revenues levied or derived from said premises, and all rights, privileges, franchises, and concessions of the Sonora Company granted by or derived from the Republic of Mexico relating to the maintenance, use, or operation thereof, but not including materials and supplies or moneys, securities, bills, and accounts receivable owned by or due to the Sonora Company; To have and to hold the same unto the Southern Company, its successors and assigns, from the beginning of the calendar month succeeding the date when this lease shall have been approved by the Executive of the Republic of Mexico until the first day of September, 1979, at and for the aggregate annual rental of \$163,486.14, gold coin of the United States of America of the present standard of weight and fineness, payable by the Southern Company to the Sonora Company, its successors and assigns, in semi-annual payments of \$81,743.07 each during the continuance of such term, and the final payment to be made at the termination thereof, but pro rata in amount according to the time elapsed subsequent to the maturity of the last semi-annual payment.

The Southern Company has agreed, and by these presents doth agree, to and with the Sonora Company, that it, the Southern Company, will pay semi-annually during the continuance of said term, as rental for the said railway and other properties hereby demised, the sum of \$81,743.07, gold coin of the United States of America, as aforesaid, the first such payment to be made six months from the day when such term shall commence,

and subsequent payments to be made each six months thereafter, and that it will make a final payment at the termination of said term to the amount above prescribed for such final payment; and that it, the Southern Company, will further promptly pay and discharge all taxes or governmental charges which during said term shall become due upon said property or any part thereof, or in respect of the same (due apportionment, however, being made between the parties hereto in respect of any portion of the period for which such taxes or governmental charges are levied which may not be included in such term, and the Sonora Company paying the pro rata share of such taxes or governmental charges for any such portion of such period), and will maintain, repair, and replace such properties so that the same at all times shall be and remain in substantially as good plight and condition as that in which they now are, the nature and character of the property being considered.

The Southern Company further agrees that at all times during the continuance of such term it will operate, use, and maintain the demised premises as required by law, and will comply with and perform all legal requirements with respect to the use and operation of said demised premises under the terms and conditions of the concessions of the Republic of Mexico to the Sonora Company in accordance with the concession of September 14, 1880, and its subsequent amendments, as well as the railroad regulations now in force or that may hereafter be enacted, and will not omit any act or thing imposed thereby upon the Company in possession of or operating said demised premises, nor do any act or thing, which might subject the demised premises, or any part thereof (except the interest of the lessee therein), to any lien or charge, or subject the Sonora Company to any legal penalty or damage, or cause a forfeiture of the demised premises, rights, and franchises or any part thereof, or of any of such concessions granted by the Republic of

Mexico to the Sonora Company as appertain or relate to the demised premises.

The Southern Company further agrees that at all times it will and its successors and assigns shall indemnify and save harmless the Sonora Company, its successors and assigns, from and against all damages and liabilities whatsoever that may be incurred or occasioned or suffered to be created by the Southern Company, its successors or assigns, in the possession, maintenance, use, or operation of the demised premises.

II. The Southern Company, its successors or assigns, at any and all times during the continuance of this lease, at its or their own cost and expense, and upon proper indemnification of the Sonora Company, may use the name of such Company to defend possession of the demised premises against others than the Sonora Company and its successors and assigns, and to acquire rights of way for the railway hereby demised in case of change of the alignment thereof, and to construct or acquire additional sidings and stations and facilities for the conduct of the business of said railway, and spurs and branches to said line of railway, as said Southern Company, its successors or assigns, may from time to time determine. In case the Southern Company, its successors or assigns, shall be evicted from the demised premises by paramount title, then and in that event the Sonora Company will pay to the Southern Company, its successors or assigns, the fair value at the time of such eviction of such additional sidings along the line of said railway and any additional buildings, structures, and machinery along said line necessary or proper for the operation thereof which may have been constructed or acquired by the Southern Company, its successors or assigns, after the day of the date of these presents and before such eviction.

III. In case default shall be made in the payment of any installment of said rental at the time hereinbefore

stipulated for the payment thereof, and such default shall continue for thirty days, or in case default shall be made in the performance of any other of the agreements of the Southern Company under this indenture, and any such default shall continue for the period of thirty days after written notice of such default shall have been given by the Sonora Company, its successors or assigns, to the Southern Company, its successors or assigns, then and in that event the Sonora Company, its successors or assigns, may thereupon without demand or other formality enter upon and take possession of all and singular the demised premises with their appurtenances, and thereafter shall be entitled to hold, retain and enjoy the same as of its original estate therein; but notwithstanding such entry the Southern Company shall be liable to the Sonora Company and its successors and assigns for any and all damages in anywise resulting from the non-fulfillment of its agreements hereunder or from any wrongful acts or omissions of the Southern Company in respect to the demised premises or any part thereof.

During the continuance of this lease of said demised premises to the Southern Company, the rent reserved being paid and all other terms of said lease being fulfilled, the Sonora Company will warrant and defend the peaceful occupation and enjoyment of said demised premises, and of every part thereof, to the Southern Company, its successors and assigns, against the lawful claims of all persons; and, so long as the undertakings and obligations of the Southern Company in this indenture expressed shall be in all things performed and fulfilled, the Sonora Company will not impose any additional lien by further mortgage, or otherwise, upon said demised premises, or any part thereof.

IV. This indenture shall be submitted to the Executive of the Republic of Mexico for examination, and shall have no legal force or effect until after the Executive of

the Republic of Mexico shall have approved the same. In case, however, such approval shall not be given on or before October 1, 1898, then this indenture shall be canceled. All stamp taxes and governmental charges of any character incurred in or about, or in connection with, procuring such approval, or in or about or in connection with the registration of, or giving original legal effect and validity to, this lease shall be borne and paid by the Sonora Company.

V. The Southern Company agrees that, at the expiration or other termination of the term for which the said premises are hereby demised, it will surrender the said premises hereby demised in substantially as good condition as when received, the nature and character of the property being considered, and that it will surrender and transfer to the Sonora Company an amount of engines, cars, machinery, tools and other equipment of a value at least equal to the appraised value of the engines, cars, machinery, tools, and other equipment delivered to the Southern Company hereunder. All such engines, cars, machinery, tools, and other equipment hereby demised may be used by the Southern Company during the continuance of this lease as fully and freely as if it were the absolute owner thereof; and, in case any thereof shall be worn out or become obsolete or unnecessary or undesirable for use in connection with the maintenance or operation of the demised premises, the Southern Company may sell or dispose thereof on such terms as it may see fit; but the Southern Company shall replace the same by other engines, cars, machinery, tools, or other equipment of equal value, which shall forthwith be transferred to the Sonora Company and become subject to the operation of this lease.

VI. It is agreed between the Southern Company and the Sonora Company that, in case the Southern Company, its successors or assigns, by reason of any act or default

of the Sonora Company, its successors or assigns (other than an act of re-entry or other act authorized by this agreement or any other agreement in writing to which the Sonora Company and the Southern Company may be parties), should fail to acquire, or, having acquired, should be deprived of, or lose, the possession of the line of railway hereby agreed to be leased to it, or any substantial part thereof, then, at the election of said Southern Company, its successors or assigns, it or they may, by simple notice delivered to the President or Secretary of the Sonora Company, or if there be no President or Secretary, then to the latest incumbent of either of such offices, terminate its or their lease or hiring of said line of railway and other properties referred to herein so agreed to be leased to it, and upon such termination of such lease or hiring any and all its or their obligations in respect to such line of railway or other properties referred to herein and in respect to rental therefor (except *pro rata* rental to the time when it or they shall have so terminated its or their lease or hiring thereof), and any other obligations assumed by said Southern Company under this lease, shall forthwith cease and determine.

In case the Southern Company, its successors or assigns, should be deprived of or lose the possession of the line of railway hereby demised, or any substantial part thereof, by reason of any defect at the time of the execution of this indenture in the title of the Sonora Company to such line of railway or to such part thereof, or by reason of any act or default of the Sonora Company, its successors or assigns (other than an act of re-entry or other act authorized by this agreement or any other agreement in writing to which the Sonora Company and the Southern Company may be parties), and thereupon the Southern Company, its successors or assigns, should terminate its or their lease or the hiring of the demised premises, then the Sonora Company will forth-

with pay to the Southern Company, its successors or assigns, the fair value, at the time of such termination of said lease, of any and all betterments and improvements to said line of railway and its appurtenances or any part of the demised premises which shall have been theretofore made thereto by said Southern Company, its successors or assigns, and of any additional sidings along the line of said railway and any additional buildings, structures and machinery along said line necessary or proper for the operation thereof, which may have been constructed or acquired by the Southern Company, its successors or assigns, after the date of these presents, and will purchase from the Southern Company, its successors or assigns, and pay for at their then fair value, any spurs and branches (not exceeding in the aggregate 200 miles in length), to the line of railway hereby demised which after the date hereof and before such termination of the lease or hiring hereunder shall have been built or acquired by the Southern Company, its successors or assigns; but the Southern Company, its successors or assigns, shall not voluntarily surrender possession of the demised premises or part thereof to others claiming paramount title or adversely claiming possession, and, in case any suit or proceeding should be instituted to deprive the Southern Company, its successors or assigns, of such possession, then it or they shall forthwith give notice of such suit or proceeding to the Sonora Company, its successors or assigns, and shall permit the Sonora Company, its successors or assigns, at its or their own cost and expense (if it or they should elect so to do), to defend such suit or proceeding or to acquire or perfect the title or right of possession to such line or part thereof.

VII. The Sonora Company hereby sells and transfers to the Southern Company all fuel, materials and supplies of all kinds belonging to the Sonora Company acquired or intended for use or consumption in connection

with the maintenance or operation of the railway and property hereby leased and on hand at the commencement of said term at a price equal to the reasonable value thereof; and the Southern Company agrees to pay therefor such price within four months thereafter.

VIII. Any portion of the demised premises appurtenant to the said line of railway, now held or which may be acquired for any purpose incidental to the operation thereof, such as premises acquired or held for the purpose of stations, depots, shops, or other buildings, or for obtaining gravel, fuel or other materials, for use or sale, which in the judgment of the Southern Company, its successors or assigns, shall be no longer requisite for use for the purposes for which the same shall have been acquired or used, and likewise any part of the track, sidings or roadway which shall have been thrown out of use by reason of straightening or alteration of the line of road, and any rails, ties or other materials constituting a part or parts of the said line of railway for which other materials of at least equal value shall have been substituted, may be sold or disposed of by the Southern Company, its successors or assigns, as may be authorized by law; but the proceeds of any such sale shall be applied to the betterment or improvement or repayment of expenses incurred in the betterment or improvement of the remainder of the demised premises, or the payment, or reimbursement of payments, for said substituted materials, or in the acquisition of other property, which forthwith shall be transferred to the Sonora Company in exchange for the property sold, and shall become subject to the operation of this lease.

IX. This indenture and the term thereby created shall not be assigned by the Southern Company, nor shall any estate pass by any such assignment thereof, unless the Executive of the Republic of Mexico shall have given its assent to such assignment. This indenture and

the lease to the Southern Company hereby made are subject to the condition that they shall terminate, and the premises hereby demised shall be surrendered to the Sonora Company, under and in pursuance of any agreement in writing to which said Sonora Company and said Southern Company may be parties, and every assignment of this lease shall be subject to any such agreement whether or not the assignee have notice thereof.

X. Subject to the provisions in Subdivision IX hereof contained, this lease and the obligations and agreements herein expressed shall bind and enure to the benefit of the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused their respective corporate seals to be hereunto affixed and attested by their respective secretaries, or assistant secretaries, and these presents to be signed by their respective presidents, the day and year first above written.

SONORA RAILWAY COMPANY, LIMITED.

By E. P. RIPLEY,

[Corporate seal]

*President.*

Attest:

L. C. DEMING,

*Secretary.*

SOUTHERN PACIFIC COMPANY.

By C. P. HUNTINGTON,

[Corporate seal]

*President.*

Attest:

I. E. GATES,

*Asst. Secretary.*

STATE OF NEW YORK }  
COUNTY OF NEW YORK, } SS.

On this 15th day of July, 1898, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Edward P. Ripley and L. C. Deming, the said Edward P. Ripley to me personally known and known to me to be the President of the Sonora Railway Company, Limited, and the said L. C. Deming, to me personally known and known to me to be the Secretary of said Sonora Railway Company, Limited, and the said Edward P. Ripley and L. C. Deming being by me respectively duly sworn, did severally make oath and say that the said Edward P. Ripley is such President, and the said L. C. Deming is such Secretary of said Sonora Railway Company, Limited, the corporation described in and which executed the foregoing instrument; that they know the corporate seal of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that they signed the foregoing instrument and affixed thereto the corporate seal of said corporation in its behalf by authority of its Board of Directors; and they severally acknowledged the said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year first above written.

D. J. SHEEHAN,

*Notary Public for the County of New York,*  
(Notarial Seal.) *State of New York. No. 47.*

My commission expires Mar. 30, 1900.

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } SS.

On this 22d day of July, 1898, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Collis P. Huntington and Isaac E. Gates, the said Collis P. Huntington, to me personally known, and known to me to be the President of the Southern Pacific Company, and the said Isaac E. Gates, to me personally known, and known to me to be the Assistant Secretary of said Southern Pacific Company, and the said Collis P. Huntington and Isaac E. Gates, being by me respectively duly sworn, did severally make oath and say that the said Collis P. Huntington is such President, and the said Isaac E. Gates is such Assistant Secretary of said Southern Pacific Company, the corporation described in and which executed the foregoing instrument; that they know the corporate seal of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that they signed the foregoing instrument and affixed thereto the corporate seal of said corporation in its behalf by authority of its Board of Directors; and they severally acknowledged the said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year first above written.

D. J. SHEEHAN,

*Notary Public for the County of New York.*

(Notarial Seal.) *State of New York. No. 47.*

My commission expires Mar. 30, 1900.

## 94 Q.—Exhibit No. 12.

## SOUTHERN PACIFIC COMPANY.

Statement showing gross earnings of Southern Pacific Company capitalized at 6% for years 1901 to 1907, inclusive.

				Gross earnings.	Gross earnings capitalized at 6 per cent.
Year ended	September				
	15,	1901	-----	\$3,288,563 26	\$54,809,387 66
"	"	"	15, 1902	-----	4,836,201 94
"	"	"	15, 1903	-----	7,690,691 62
"	"	"	1, 1904	-----	9,684,189 05
"	"	"	1, 1905	-----	15,788,762 77
"	"	June	30, 1906	-----	17,750,454 03
"	"	"	30, 1907	-----	27,603,470 00
					460,057,833 33

Received by mail and filed Feb. 24, 1908.

BEN MARSHALL, *C. F. C. C.*

## 95 Q.—Exhibit No. 13.

## SOUTHERN PACIFIC COMPANY.

Statement showing net earnings of Southern Pacific Company capitalized at 6% for years 1901 to 1907 inclusive.

				Net earnings.	Net earnings capitalized at 6 per cent.
Year ended	September				
	15,	1901	-----	\$18,321 32	\$305,355 33
"	"	"	15, 1902	-----	None
"	"	"	15, 1903	-----	"
"	"	"	1, 1904	-----	"
"	"	"	1, 1905	-----	2,212,964 21
"	"	June	30, 1906	-----	784,041 73
"	"	"	30, 1907	-----	4,858,975 66
					80,982,927 66

Received by mail and filed Feb. 24, 1908.

BEN MARSHALL, *C. F. C. C.*

## 95 Q.—Exhibit No. 14.

## SOUTHERN PACIFIC COMPANY.

Statement showing gross earnings of the Southern Pacific Company for the years 1901 to 1907 inclusive.

				Gross earnings.
Year ended	September	15,	1901	\$3,288,563 26
"	"	"	15, 1902	4,836,201 94
"	"	"	15, 1903	7,690,691 62
"	"	"	1, 1904	9,684,189 05
"	"	"	1, 1905	15,788,762 77
"	June	30,	1906	17,750,454 03
"	"	30,	1907	27,603,470 00

Received by mail and filed Feb. 24, 1908.

BEN MARSHALL, *C. F. C. C.*

## 97 Q.—Exhibit No. 15.

## SOUTHERN PACIFIC COMPANY.

Statement showing net earnings of the Southern Pacific Company for the years 1901 to 1907, inclusive.

				Net earnings.
Year ended	September	15,	1901	\$18,321 32
"	"	"	15, 1902	None
"	"	"	15, 1903	"
"	"	"	1, 1904	"
"	"	"	1, 1905	2,212,964 21
"	June	30,	1906	784,041 73
"	"	30,	1907	4,858,975 66

Rec'd by mail and filed Feb'y 24, 1908.

BEN MARSHALL, *C. F. C. C.*

## 98 Q.—Exhibit No. 16.

## SOUTHERN PACIFIC COMPANY.

Statement showing amounts expended by Southern Pacific Co. for operating lines above the income derived from such lines during the years 1901 to 1907 inclusive.

Years ended.	Oregon & California R. R. Co.	South Pacific Coast R'y Co.	New Mex. & Arizona R. R.
Sept. 15, 1901.....	\$404,662 22	\$207,923 95	\$48,749 68
Sept. 15, 1902.....	207,029 43	435,761 11	125,122 96
Sept. 15, 1903.....	308,278 35	790,960 04	21,385 24
Sept. 1, 1904.....	174,395 34	149,158 26	49,149 86
Sept. 1, 1905.....	1,174,970 91	251,973 08	154,555 29
June 30, 1906.....	602,174 36	589,781 17	8,886 43
June 30, 1907.....	586,496 33	1,312,237 49	-----
Years ended.	Sonora R'y.		Total.
Sept. 15, 1901.....	\$113,515 03		\$774,850 88
Sept. 15, 1902.....	143,479 50		911,393 00
Sept. 15, 1903.....	150,590 93		1,271,214 56
Sept. 1, 1904.....	218,525 90		591,229 36
Sept. 1, 1905.....	176,022 73		1,757,522 01
June 30, 1906.....	96,982 42		1,297,824 38
June 30, 1907.....	42,112 62		1,940,846 44

Rec'd by mail and filed Feb'y 24, 1908.

BEN MARSHALL, C. F. C. C.

Memo. of steamships and other Floating Equipment owned, their original cost, and present worth respectively on September 15, 1901, 1902, 1903, and September 1, 1904, 1905, and June 30, 1906, based on depreciation of 5 per cent per annum until depreciation to the amount of 60 per cent has been absorbed, leaving as the present worth of the ship 40 per cent of its original cost.

Name of ship.	Date placed in service.	Original cost of ships.	PRESENT WORTH.					
			September 15, 1901.	September 15, 1903.	September 1, 1904.	September 1, 1905.	June 30, 1906.	June 30, 1907.
S. S. Chalmette	Nov., 1879.	\$255,000.00	\$102,000.00	\$102,000.00	\$102,000.00	\$102,000.00	\$102,000.00	\$102,000.00
S. S. Excelsior	Nov., 1882.	362,553.00	145,021.20	145,021.00	145,021.00	145,021.00	145,021.00	145,021.00
S. S. El Dorado	1884.	358,892.97	143,557.19	143,557.19	143,557.19	143,557.19	143,557.19	143,557.19
S. S. El Paso	1884.	358,971.93	143,588.77	143,588.77	143,588.77	143,588.77	143,588.77	143,588.77
S. S. El Monte	1886.	360,109.14	158,493.68	144,043.75	144,043.75	144,043.75	144,043.75	144,043.75
S. S. El Mar	1889.	391,371.52	200,907.50	181,319.02	172,630.82	163,999.28	157,165.98	156,548.61
S. S. El Sud	July, 1899.	515,015.19	458,148.95	435,241.50	413,479.43	393,666.88	377,486.87	361,758.25
S. S. El Norte	Sept., 1899.	515,015.18	462,440.71	439,318.68	417,352.75	397,354.59	379,238.53	363,436.92
S. S. El Rio	Oct., 1899.	515,015.18	464,586.60	441,357.27	419,289.41	399,198.45	382,741.97	366,794.38
S. S. El Cid	Dec., 1899.	515,015.19	468,878.48	445,434.56	423,162.83	402,886.28	387,419.97	376,195.44
S. S. Proteus	April, 1900.	546,018.85	506,204.97	480,849.72	456,849.98	434,959.25	413,211.29	395,994.15
S. S. El Valle	June, 1900.	546,018.85	510,755.14	485,217.38	460,956.50	438,869.02	416,925.57	399,553.67
S. S. El Dia	June, 1901.	556,261.72	548,149.58	520,742.10	494,705.00	470,998.10	447,448.20	428,804.55
S. S. El Siglo	Sept., 1901.	556,261.73	548,149.58	520,742.10	494,705.00	470,998.10	447,448.20	428,804.55
S. S. El Alba	Dec., 1901.	557,176.11	535,121.23	508,365.17	484,006.01	459,805.71	440,647.13	418,614.77
S. S. El Amigo	Jan., 1902.	556,801.72	537,081.70	510,227.62	485,779.18	461,490.25	442,261.50	420,148.42
S. S. Momus	April, 1902.	37,101.98	34,396.63	32,676.80	31,042.96	29,555.48	28,077.71	26,907.81
S. S. Antilles	Nov., 1906.	1,040,087.99	---	---	---	---	---	---
S. S. Creole	May, 1907.	1,043,845.51	---	---	---	---	---	---
Tug Confidence	June, 1907.	1,018,198.92	---	---	---	---	---	---
and 28 barges	Dec., 1905.	250,250.00	---	---	---	---	242,951.03	230,803.48
Tug El Chico	March, 1907.	50,358.13	---	---	---	---	---	49,518.81
Tug El Toro	March, 1907.	69,882.94	---	---	---	---	---	68,718.23
Barge El Toro	June, 1904.	15,184.54	---	---	14,994.74	14,245.00	13,532.75	12,856.11
Barge Cyclops	June, 1907.	27,500.00	---	---	---	---	---	27,385.42
Barge Penates	May, 1907.	9,050.00	---	---	---	---	---	8,974.58
Barge Minerva	April, 1907.	9,600.00	---	---	---	---	---	9,480.00

Total -----\$11,036,558.29 \$4,347,129.40 \$5,757,132.86 \$5,496,987.60 \$5,281,080.29 \$5,050,936.87 \$5,111,571.98 \$8,115,643.47

Received by mail and filed Feb. 24, 1908.

BEN MARSHALL, C. F. C. C.

122 Q.—Exhibit No. 18.

## SOUTHERN PACIFIC COMPANY.

Since looking into the matter, I find that I have no copy or copies of such reports. I do not know if any report or reports have been made.

Rec'd by mail and filed Feb'y 24, 1908.

BEN MARSHALL, *C. F. C. C.*

124 Q.—Exhibit No. 19.

## SOUTHERN PACIFIC COMPANY.

Statement showing amount of taxes paid by the Southern Pacific Co. as an independent corporation to each of the States or territories named below for the years 1901, 1902, 1903, 1904, 1905, 1906, and 1907.

	Louisiana.	Texas.	New Mex.	Arizona
Year 1901 -----	-----	None	None	None
Year 1902 -----	-----	"	"	"
Year 1903 -----	\$35 00	"	"	"
Year 1904 -----	-----	"	"	"
Year 1905 -----	-----	"	"	"
Year 1906 -----	2,825 95	"	"	"
Year 1907 -----	198 75	"	"	"
Total -----	\$3,059 70	None	None	None
	California.	Oregon.	Nevada.	Utah.
Year 1901 -----	\$27,508 52	None	None	None
Year 1902 -----	26,726 23	"	"	"
Year 1903 -----	20,312 51	"	"	"
Year 1904 -----	26,253 37	"	"	"
Year 1905 -----	45,221 70	"	"	"
Year 1906 -----	24,833 23	"	"	"
Year 1907 -----	94,180 97	"	"	"
Total -----	\$265,036 53	None	None	None

Rec'd by mail and filed Feb'y 24, 1908.

BEN MARSHALL, *C. F. C. C.*

## 133 Q.—Exhibit No. 20.

## SOUTHERN PACIFIC COMPANY.

Statement showing amount of taxes paid to the Territory of New Mexico by the lines leased and operated by the Southern Pacific Company during the years 1901, 1902, 1903, 1904, 1905, 1906, and 1907.

	Central Pacific R'y Co.	Oregon & Cal- ifornia R.R.Co.	South Pacific Coast R'y Co.
Year 1901 -----	None	None	None
Year 1902 -----	"	"	"
Year 1903 -----	"	"	"
Year 1904 -----	"	"	"
Year 1905 -----	"	"	"
Year 1906 -----	"	"	"
Year 1907 -----	"	"	"

	Southern Pacific R. R. Co.	New Mexico & Arizona R.R.Co.	Sonora R'y Co.
Year 1901 -----	\$36,020 08	None	None
Year 1902 -----	43,974 89	"	"
Year 1903 -----	38,753 32	"	"
Year 1904 -----	34,523 15	"	"
Year 1905 -----	38,165 89	"	"
Year 1906 -----	*	"	"
Year 1907 -----	46,109 40	"	"

\*Can not state amount as the records were destroyed in the San Francisco fire—April 18, 1906.

Rec'd by mail and filed Feb'y 24, 1908.

BEN MARSHALL, C. F. C. C.

## 134 Q.—Exhibit No. 21.

## SOUTHERN PACIFIC COMPANY.

Statement showing amount of taxes paid to the State of Arizona by the lines leased and operated by the Southern Pacific Company during the years 1901, 1902, 1903, 1904, 1905, 1906, and 1907.

	Central Pacific R'y Co.	Oregon & Cal- ifornia R.R.Co.	South Pacific Coast R'y Co.
Year 1901 -----	None	None	None
Year 1902 -----	"	"	"
Year 1903 -----	"	"	"
Year 1904 -----	"	"	"
Year 1905 -----	"	"	"
Year 1906 -----	"	"	"
Year 1907 -----	"	"	"

	Southern Pacific R. R. Co.	New Mexico & Arizona R.R.Co.	Sonora R'y Co.
Year 1901 -----	\$96,519 34	\$12,778 59	None
Year 1902 -----	102,657 65	12,935 05	"
Year 1903 -----	112,729 10	15,497 57	"
Year 1904 -----	83,750 37	14,371 95	"
Year 1905 -----	92,912 22	13,559 48	"
Year 1906 -----	*	14,172 50	"
Year 1907 -----	130,068 54	14,779 42	"

\*Can not state amount as the records were destroyed in the San Francisco fire—April 18, 1906.

Rec'd by mail and filed Feb'y 24, 1908.

BEN MARSHALL, *C. F. C. C.*

136 Q.—Exhibit No. 22.

### SOUTHERN PACIFIC COMPANY.

Statement showing amount of taxes paid to the State of California by the lines leased and operated by the Southern Pacific Company during the years 1901, 1902, 1903, 1904, 1905, 1906, and 1907.

	†Central Pacific R'y Co.	Oregon & Cal- ifornia R.R.Co.	South Pacific Coast R'y Co.
Year 1901 -----	\$472,656 53	None	\$24,173 70
Year 1902 -----	316,517 85	"	27,803 01
Year 1903 -----	419,714 50	"	27,144 34
Year 1904 -----	573,102 48	"	26,352 65
Year 1905 -----	512,160 35	"	28,550 82
Year 1906 -----	*	"	29,345 00
Year 1907 -----	532,374 91	"	34,058 56

	Southern Pacific R. R. Co.	New Mexico & Arizona R.R.Co.	Sonora R'y Co.
Year 1901 -----	\$526,168 71	None	None
Year 1902 -----	682,469 27	"	"
Year 1903 -----	711,073 54	"	"
Year 1904 -----	749,389 00	"	"
Year 1905 -----	848,456 59	"	"
Year 1906 -----	*	"	"
Year 1907 -----	1,028,036 94	"	"

†Includes taxes paid on granted and other lands not used in the operation of the railway.

\*Can not state amount as the records were destroyed in the San Francisco fire—April 18, 1906.

Rec'd by mail and filed Feb'y 24, 1908.

BEN MARSHALL, *C. F. C. C.*

138 Q.—Exhibit No. 23.

### SOUTHERN PACIFIC COMPANY.

Statement showing amount of taxes paid to the State of Oregon by the lines leased and operated by the Southern Pacific Co. during the years 1901, 1902, 1903, 1904, 1905, 1906, and 1907.

	Central Pacific R'y Co.	†Oregon & Cal- ifornia R.R.Co.	South Pacific Coast R'y Co.
Year 1901 -----	None	\$82,030 20	None
Year 1902 -----	"	98,318 37	"
Year 1903 -----	"	93,482 28	"
Year 1904 -----	"	201,601 78	"
Year 1905 -----	"	180,360 67	"
Year 1906 -----	"	110,339 08	"
Year 1907 -----	"	145,169 17	"

	Southern Pacific R. R. Co.	New Mexico & Arizona R.R.Co.	Sonora R'y Co.
Year 1901 -----	None	None	None
Year 1902 -----	"	"	"
Year 1903 -----	"	"	"
Year 1904 -----	"	"	"
Year 1905 -----	"	"	"
Year 1906 -----	"	"	"
Year 1907 -----	"	"	"

†Includes taxes on granted and other lands not used in the operation of the railway.

Rec'd by mail and filed Feb'y 24, 1908.

BEN MARSHALL, *C. F. C. C.*

## 140 Q.—Exhibit No. 24.

## SOUTHERN PACIFIC COMPANY.

Statement showing amount of taxes paid to the State of Nevada by the lines leased and operated by the Southern Pacific Company during the years 1901, 1902, 1903, 1904, 1905, 1906, and 1907.

	Central Pacific R'y Co.	Oregon & Cal- ifornia R.R.Co.	South Pacific Coast R'y Co.
Year 1901 -----	\$89,367 89	None	None
Year 1902 -----	137,489 93	"	"
Year 1903 -----	166,135 54	"	"
Year 1904 -----	221,600 71	"	"
Year 1905 -----	209,492 45	"	"
Year 1906 -----	*	"	"
Year 1907 -----	215,895 32	"	"

	Southern Pacific R. R. Co.	New Mexico & Arizona R.R.Co.	Sonora R'y Co.
Year 1901 -----	None	None	None
Year 1902 -----	"	"	"
Year 1903 -----	"	"	"
Year 1904 -----	"	"	"
Year 1905 -----	"	"	"
Year 1906 -----	"	"	"
Year 1907 -----	"	"	"

\*Can not state amount as the records were destroyed in the San Francisco fire—April 18, 1906.

Rec'd by mail and filed Feb'y 24, 1908.

BEN MARSHALL, *C. F. C. C.*

## 142 Q.—Exhibit No. 25.

## SOUTHERN PACIFIC COMPANY.

Statement showing amount of taxes paid to the State of Utah by the lines leased and operated by the Southern Pacific Co. during the years 1901, 1902, 1903, 1904, 1905, 1906, and 1907.

	Central Pacific R'y Co.	Oregon & Cal- ifornia R.R.Co.	South Pacific Coast R'y Co.
Year 1901 -----	\$19,561 84	None	None
Year 1902 -----	31,725 11	"	"
Year 1903 -----	54,150 07	"	"
Year 1904 -----	91,449 38	"	"
Year 1905 -----	68,064 51	"	"
Year 1906 -----	*	"	"
Year 1907 -----	98,784 47	"	"

	Southern Pacific R. R. Co.	New Mexico & Arizona R.R.Co.	Sonora R'y Co.
Year 1901 -----	None	None	None
Year 1902 -----	"	"	"
Year 1903 -----	"	"	"
Year 1904 -----	"	"	"
Year 1905 -----	"	"	"
Year 1906 -----	"	"	"
Year 1907 -----	"	"	"

\*Can not state amount as the records were destroyed in the San Francisco fire—April 18, 1906.

Rec'd by mail and filed Feb'y 24, 1908.

BEN MARSHALL, *C. F. C. C.*

152 Q.—Exhibit No. 26.

### SOUTHERN PACIFIC COMPANY.

Memorandum showing the home port of the steamers, tugs, and barges owned by the Southern Pacific Company June 30, 1907.

S. S. Chalmette . . . . .	New York
S. S. Excelsior . . . . .	"
S. S. El Dorado . . . . .	"
S. S. El Paso . . . . .	"
S. S. El Monte . . . . .	"
S. S. El Mar . . . . .	"
S. S. El Sud . . . . .	"
S. S. El Norte . . . . .	"
S. S. El Rio . . . . .	"
S. S. El Cid . . . . .	"

S. S. Comus .....	New York.
S. S. Proteus .....	"
S. S. El Valle .....	"
S. S. El Dia .....	"
S. S. El Siglo .....	"
S. S. El Alba .....	"
S. S. El Amigo .....	"
S. S. Momus .....	"
S. S. Antilles .....	"
S. S. Creole .....	"
Tug Confidence and 28 barges.....	"
Tug El Chico .....	"
Tug El Toro .....	"
Barge El Toro .....	Galveston
Barge Cyclops .....	New York
Barge Penates .....	"
Barge Minerva .....	"

Rec'd by mail and filed Feb'y 24, 1908.

BEN MARSHALL, *C. F. C. C.*

### 7 Q.—Exhibit No. 27

#### SOUTHERN PACIFIC COMPANY.

Memo. of valuation of Common and Preferred Stocks, based on quotations for periods for which reports were rendered to Auditor of Public Accounts of Kentucky, from September 15, 1900, to June 30, 1907, inclusive.

Years.	Stock.	Amount outstanding.	Rate.	Highest rate.	Valuation.
1901	Common .....	\$197,847,788 40	63 $\frac{5}{8}$		\$125,880,655 37
1902	Common .....	197,847,227 40	81 $\frac{1}{4}$		160,752,497 26
1903	Common .....	197,849,258 64	76 $\frac{1}{2}$		151,354,682 86
1904	Common .....	197,849,258 64	59		116,731,062 60
1905	Common .....	197,849,258 64	72.37		143,183,508 48
1905	Preferred .....	39,563,300 00	121.12		47,919,068 96
1906	Common .....	197,849,258 64	72.87		144,172,754 77
1906	Preferred .....	39,569,700 00	122.25		48,373,958 25
1907	Common .....	197,849,258 64	97.50		192,903,027 17
1907	Preferred .....	39,569,700 00	120.38		47,634,004 86

Years.	Stock.	Lowest rate.		Average rate.	
		Rate.	Valuation.	Rate.	Valuation.
1901	Common -----	29	\$57,375,858 64	46.31	\$91,623,310 81
1902	Common -----	48	94,967,629 15	64.61	127,830,385 82
1903	Common -----	46	91,010,658 97	61.25	121,182,670 92
1904	Common -----	38 $\frac{5}{8}$	76,419,276 15	48.81	96,570,223 14
1905	Common -----	46 $\frac{7}{8}$	92,741,839 99	59.62	117,957,728 00
1905	Preferred -----	113	44,706,529 00	117.06	46,312,798 98
1906	Common -----	61	120,688,047 77	66.93	132,420,508 81
1906	Preferred -----	117	46,296,549 00	119.62	47,333,275 14
1907	Common -----	63 $\frac{1}{4}$	125,139,656 09	80.37	159,011,449 18
1907	Preferred -----	109 $\frac{1}{4}$	43,229,897 25	114.81	45,429,972 57

Rec'd by mail and filed Feb'y 24, 1908.

BEN MARSHALL, C. F. C. C.

8 Q.—Exhibit No. 28.

### SOUTHERN PACIFIC COMPANY.

Memo. showing the value of material, fuel, and supplies, rolling stock and real estate for each of the years 1901, 1902, 1903, 1904, 1905, 1906, and 1907.

Year ended.	Material, fuel, and supplies.	Rolling stock.	Real estate.	Total.
June 30, 1901..	\$2,759,616 75	\$152,153 28	\$2,797,905 59	\$5,709,675 62
June 30, 1902..	5,280,960 42	4,778,714 67	3,393,093 86	13,452,768 95
June 30, 1903..	7,500,913 21	9,936,813 31	4,388,984 26	21,826,710 78
June 30, 1904..	8,925,474 03	2,501,140 71	4,595,891 52	16,022,506 26
June 30, 1905..	6,898,289 70	5,627,484 24	4,646,536 45	17,172,310 39
June 30, 1906..	7,247,700 87	11,675,422 52	11,159,828 71	30,082,952 10
June 30, 1907..	9,160,125 08	15,157,531 43	14,849,702 64	39,167,359 15

Rec'd by mail and filed Feb'y 24, 1908.

BEN MARSHALL, C. F. C. C.

14 Q.—Exhibit No. 29.

### PACIFIC MAIL STEAMSHIP CO.

Memo. of valuation of Capital Stock, based on quotations for periods for which reports were rendered by the Southern Pacific Company to the Auditor of Public Accounts of the State of Kentucky from September 15, 1900, to June 30, 1907.

	Amount outstanding.	Highest rate.	
		Rate.	Valuation.
Year ended Sept. 15, 1901-----	\$20,000,000 00	57	\$11,400,000 00
Year ended Sept. 15, 1902-----	20,000,000 00	49½	9,900,000 00
Year ended Sept. 15, 1903-----	20,000,000 00	43	8,600,000 00
Year ended Sept. 1, 1904-----	20,000,000 00	33¾	6,650,000 00
Year ended Sept. 1, 1905-----	20,000,000 00	49½	9,900,000 00
Year ended June 30, 1906-----	20,000,000 00	53⅝	10,725,000 00
Year ended June 30, 1907-----	20,000,000 00	44½	8,900,000 00

	Lowest rate.		Average rate.	
	Rate.	Valuation.	Rate.	Valuation.
Year ended Sept. 15, 1901--	27½	\$5,500,000 00	42.25	\$8,450,000 00
Year ended Sept. 15, 1902--	37½	7,500,000 00	43.50	8,700,000 00
Year ended Sept. 15, 1903--	17	3,400,000 00	30.	6,000,000 00
Year ended Sept. 1, 1904--	17½	3,500,000 00	25.375	5,075,000 00
Year ended Sept. 1, 1905--	28¾	5,750,000 00	39.125	7,825,000 00
Year ended June 30, 1906--	28¾	5,750,000 00	41.1875	8,237,500 00
Year ended June 30, 1907--	21½	4,300,000 00	33.	6,600,000 00

Rec'd by mail and filed Feb'y 24, 1908.

BEN MARSHALL, C. F. C. C.

Said opinion filed on February 27, 1909 is as follows:

JEFFERSON CIRCUIT COURT.

CHANCERY BRANCH, FIRST DIVISION.

No. 45770.

COMMONWEALTH OF KENTUCKY, BY D. L. HARDESTY, REVENUE AGENT, - - - - - Plaintiff.

*vs.*

SOUTHERN PACIFIC COMPANY, ET AL, - - Defendants.

No. 50,619

COMMONWEALTH OF KENTUCKY, BY D. L. HARDESTY, REVENUE AGENT, - - - - - Plaintiff.

*vs.*

SOUTHERN PACIFIC COMPANY, - - - - - Defendant.

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OPINION UPON FINAL HEARING.

The Southern Pacific Company is a corporation created by an Act of the Legislature of Kentucky proved March 17th, 1884 (Acts 1883-4, p. 725), as amended by an Act approved March 21st, 1888 (Acts 1887-8, Vol. 2 p. 310). It conducts a transportation line from New York to California, Oregon and Japan. From New York to New Orleans and to Galveston the transportation is by steamship lines which connect at these points with railroads, controlled or leased by defendant, and carry the freight to the Pacific Coast, and to the

Orient. It has no line of railroad in Kentucky and carries on no business in Kentucky.

In September, 1905, Benson O. Herr, Assessor for Jefferson County, assessed the personal property of the Southern Pacific Company for taxation for the year 1906 at the sum of fifty millions of dollars. The Assessor's Book, showing the assessment, was returned to the County Court Clerk in January 1906, and placed before the Board of Supervisors of taxes, for review. That Board met January 1st, 1906, and adjourned February 14th, 1906. On February 12th the Board of Supervisors reduced the assessment from \$50,000,000.00 to \$500,000.00.

On February 12th, 1906 George H. Alexander, Revenue Agent for the State at large began proceedings, by means of a statement (No. 1901) filed in the Jefferson County Court, to assess and collect taxes upon the omitted personal property of the Southern Pacific Company, which he alleged was fairly worth \$300,000.00. He alleged that said omitted personal property consisted of notes, bonds, mortgages, stocks, choses in actions, leases, patent rights and privileges, land and water transportation agencies, cash on hand and on deposit, locomotives, steamships, lighters, boats, cars, cross-ties, steel rails, machinery, tools and fuel.

In an amended statement filed February 13th, 1906, the Commonwealth specified the items of property owned by the Company aggregating something over \$300,000,000 according to the statement.

On February 14th, 1906, the Commonwealth by A. J. Bizot, Revenue Agent for Jefferson County, began similar proceedings in the Jefferson County Court, by a statement (No. 1919), general in its terms, which alleged that the Southern Pacific Company owned personal property

on September 1st, 1905 of the value of \$240,000,000.00 and which had not been taxed. He also asked that it be assessed as omitted personal property and the tax and penalty be collected pursuant to the provisions of the Statute providing for the assessment and collection of taxes upon omitted personal property. On May 7th, 1906 a special demurrer was filed to the Alexander statement, which was assigned to May 11th for trial. On June 27th the County Judge filed a written opinion, and overruled the special demurrer.

On August 23rd, 1906, the Company filed an answer, in each case, consisting of five paragraphs. The First paragraph of the answers was a traverse. The second denied the right of the County Assessor to require defendant to make a return to him and his right to make any assessment; that he had acted arbitrarily and without right in making the assessment of \$50,000,000.00, and that defendant had paid the tax on the reduced assessment of \$500,000.00. The third paragraph alleged that the situs of all this personal property was without the State of Kentucky and not subject to assessment therein. The fourth paragraph alleged that defendant had for many years reported said property to the State Auditor as required by Section 4078 of the Kentucky Statutes, and that it had been considered in fixing the value of defendant's franchise at \$1,000,000.00—which was its full value; while the fifth paragraph relied upon the practical construction observed by the State authorities of treating the defendant as a railroad liable for a franchise tax under Section 4078 *supra*.

On motion of defendant the two cases were ordered to be heard together as one action.

On the same day—August 23rd, 1906—the following judgment was entered.

## JEFFERSON COUNTY COURT.

COMMONWEALTH OF KENTUCKY, BY GEORGE H. ALEXANDER,  
REVENUE AGENT FOR THE STATE AT LARGE *Plaintiff*.

*vs.*

No. 1901.

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant*.

COMMONWEALTH OF KENTUCKY, BY A. J. BIZOT, REVENUE  
AGENT FOR JEFFERSON COUNTY, - - - *Plaintiff*.

*vs.*

No. 1917.

SOUTHERN PACIFIC COMPANY, - - - - - *Defendant*.

## JUDGMENT.

On motion of the defendant these two causes were ordered to be heard together as one and the same.

Thereupon came the defendant and filed its answer herein.

Said causes coming on to be heard upon the pleadings, exhibits, and proof, and the Court being advised, orders and adjudges that for the year 1906 there was omitted from assessment defendant's property, consisting of cash, stocks, bonds, and choses in action of the fair cash value of \$2,800,000, estimated at the price it would bring at a fair voluntary sale; and the Court hereby assesses said property at said sum.

The Court further finds and adjudges that no other or further property of the defendant set forth in the statements herein for the year 1906 is liable for assessment in this State.

The Court further finds that the rate of taxation for the said year 1906 was 50 cents on the \$100, and the rate of taxation for Jefferson County for said year was 31 cents on the \$100.

The Court further finds and adjudges that the amount of taxes due by the defendant on said property liable to assessment as aforesaid in Jefferson County and State of Kentucky is as follows:

State of Kentucky .....	\$14,000
Jefferson County .....	8,680
Or a total of .....	<u>\$22,680</u>

The Court further finds and adjudges that the penalty thereof is \$4,536.

By agreement between George H. Alexander, State Revenue Agent, whose suit was first filed, and A. J. Bizot, County Revenue Agent, who filed the subsequent action, the penalty is to be divided as follows:

To George H. Alexander .....	\$3,628.80
To A. J. Bizot .....	907.20

And the sheriff is directed to report said penalty accordingly.

The Clerk of this Court is ordered and directed to certify said assessment and penalty to the Auditor of Public Accounts of the State of Kentucky and the Sheriff of this County.

The Sheriff is directed to collect the taxes on said assessment, together with the costs and penalty as other taxes, costs, and penalties are collected by him.

Aug. 23, 1906.

CHAS. A. WILSON,  
*Judge.*

R. W. BINGHAM,  
*County Attorney.*

GEO. H. ALEXANDER,

*Revenue Agent for the State at Large.*

A. J. BIZOT,

*Revenue Agent for Jefferson County.*

HUMPHREY & HUMPHREY,

*Attorneys for defendant.*

The tax as therein fixed was paid. On February 26th, 1907, the Commonwealth by D. L. Hardesty, filed its petition (No. 2607) in the Jefferson County Court, asking that the judgment entered in that court on August 23rd, 1906 in the Alexander and Bizot suits, as above given, be vacated and modified for three reasons, viz:

1. Because there was a clerical misprision by the Clerk in not entering judgment for the amount of taxes due the Commonwealth from the Southern Pacific Company as therein claimed and set forth;

2. Because said judgment was obtained by the fraud practiced by the Southern Pacific Company, its agents and employes; and

3. Because said judgment was and is the result of an illegal compromise of the tax due to the Commonwealth of Kentucky made by and between the Southern Pacific Company and the said Revenue Agents Alexander and Bizot who were without authority to compromise said taxes and said judgment is void.

Said action (2607) proceeded upon issues properly made, including substantially the issues tried in the original Alexander and Bizot suits in addition to the issues of misprision, fraud and illegality raised in the new suit (No. 2607) until July 7th, 1908, when, by order of the County Court, it was dismissed and an appeal was granted to the Jefferson Circuit Court. It is here on appeal, is numbered 50,619 and is the second styled suit in the caption.

On April 9th, 1907, said Hardesty as State Revenue Agent also filed this original action (No. 45,770) in the Jefferson Circuit Court against the Southern Pacific Company and the individual members of the Board of Supervisors of Taxes for Jefferson County for the year 1906, asking by way of relief, that said Board be required to re-assemble and make an order reinstating on the Assessor's book, or tax book for 1906, the original assessment of \$50,000,000.00; to certify and approve said book when so corrected, and for a judgment against the Southern Pacific Company for taxes upon \$49,500,000.00 at the rate of fifty cents upon the hundred dollars, with interest and the statutory penalty of 20 per cent thereon. This is the action first above styled in the caption, and is known in the record as the "Mandamus Suit" to distinguish it from the second above styled case in the caption which is known as the "County Court Case"—now here on appeal.

The affirmative defenses interposed to the Mandamus Suit are as follows:

1. A plea of *res judicata*, under and by virtue of the judgment of the Jefferson County Court entered August 23rd, 1906, in the Alexander and Bizot suits above referred to;
2. The defendant insists upon the validity of the reduction of the assessment made by the Board of Supervisors on February 12th, 1906 and its payment of the tax upon that assessment;
3. That defendant company can be assessed upon its franchise only and by the State Board of Valuation and Assessment; that it has been so assessed by that Board at \$1,000,000.00; pursuant to a report returned to the State Auditor under Section 4078 of the Kentucky Statutes, and has paid that tax;

4. The practical and continued construction which has been made of the revenue laws by the State Board of Valuation & Assessment from 1893 to 1907 inclusive, to the effect that defendant is assessable upon its franchise as a railway company;

5. That none of these assets now sought to be assessed and taxed ever had any situs in Kentucky; and,

6. That having made a full return as required by the Statute, defendant could not, in any event, be liable for a penalty.

Subsequent pleadings made an issue upon each of these defenses. It will be noticed that the same questions are presented for decision in each case. Indeed, it is stated in the brief of counsel for the Company, that the petition in the County Court case was dismissed *pro forma*, the parties to the cause believing that it should be brought to the Circuit Court and tried with the suit originally filed in this Court.

1. It is proper to first decide that question raised by the plea of *res judicata* in the Mandamus suit; for if the judgment of the County Court of August 23rd, 1906 in the Alexander and Bizot suits is valid, it necessarily precludes the further consideration of the other questions raised in these cases which are a mere repetition of the questions raised and decided in the Alexander and Bizot suits. The same question is raised by the petition in the County Court Case which is a direct proceeding to vacate and set aside the judgment upon the ground: (1) that it was obtained by the fraud of the defendant Company; and (2) it was the result of an illegal compromise of a tax claim which the Revenue Agents had no authority to make.

In the Mandamus Suit the Reply meets the plea of *res judicata* by alleging that said alleged judgments were

not and are not the judgments or findings of said Jefferson County Court, but were the result of an unlawful compromise and agreement between the Company and the Revenue Agents and their respective attorneys, whereby, and in consideration of the payments of said penalties aggregating \$4,536.00 to said Revenue Agents by the defendant Company, said agents agreed to and did desist from the further prosecution of said suits; that by said compromise the defendant was to and did pay taxes on \$2,800,000.00 in lieu of and instead of on property worth \$250,000,000.00; that said compromise was procured by the fraud of the defendant company; that said compromise was prepared, by agreement between said Revenue Agents and the said Company and its attorneys, and entered as the judgment of the County Court, when in fact the Judge thereof was not present, and heard no evidence whatever, nor did he read any statement filed with the pleadings; that there was never any trial upon the merits of either of said suits in said Court, nor was there any hearing in said Court in which evidence was produced by either party, and that the Court heard no proof as to the value of any of the property of the defendant company. It is further specifically charged that the clause of the judgment reading: "The Court further finds and adjudges that no other or further property of the defendant set forth in the statement herein for the year 1906 is liable for assessment in this State"—was prepared by the defendant Company's counsel and entered as a part of said compromise judgment of the County Court, when, in fact, the Court neither made said finding, saw, read nor determined the facts set forth therein; that it made no such finding; and that said judgment is void.

There is no evidence even tending to support the charges of fraud and bad faith either in the procuring or in the entry of the compromise judgment in the County Court. It does, however, clearly appear that no evidence was heard by the Court as to the issues made by the pleadings or as to the value of the defendant's property or otherwise, and that the judgment was agreed to out of Court by the Revenue Agents and their attorneys and the County Attorney on the one side, and by the defendant Company and its attorneys on the other, and it was then signed by the Judge as an agreed judgment. Exceptions have been taken to the testimony of the County Judge as to what occurred or did not occur in the prosecution and trial of the case which led up to the judgment, and *Fayerweather v. Ritch*, 195 U. S. 276 is cited in support of the exceptions. Clearly, however, the exception is not well taken, since there is no attempt to contradict the judgment but only to show those facts which the record wholly fails to show, and which it is claimed render the judgment nugatory. It is always competent, for instance, to show that a personal judgment regular on its face and supported by service of a summons, is, in reality, void for the want of service of summons. The testimony here does not go to show or impeach the reasoning of the Judge by which he reached the conclusion embodied in his judgment, for that can only be corrected by appeal or some appropriate review, it only shows that there was no evidence heard, and no process of ratiocination by the Judge—but that it was a judgment agreed upon by the parties and their attorneys. Moreover, the testimony of the County Judge is merely cumulative upon this point, and the conclusion above announced is fully supported by the testimony of M. J. Holt,

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Attorney for Alexander, by that of the County Clerk, and that of the County Attorney.

With the question of fraud eliminated, we are yet confronted with the question of the validity of the judgment (1) on account of the manner of its obtention, free though it be of all fraud, and (2) the effect to be given it by reason of its general terms, even though its validity be upheld.

If the judgment is invalid or insufficient under either view, the plea of *res judicata* cannot prevail.

(1) A judgment, fairly obtained, is the act of the Court, and the fact that the litigants agreed to its provisions does not make it any the less the act of the Court. In either case the responsibility of the Court or the Judge thereof, is the same. The Judge is not, in any respect or degree, required to enter a judgment as drawn by the parties, on the contrary it is his right and duty to enter a proper judgment. If he approves and adopts a judgment as agreed upon and drawn by the parties to the action, the Judge thereby makes that judgment his judgment as fully as though he had drawn it with his own hand and without consulting the parties or their attorneys. When a contested question of fact arises the Court can determine it in one of two ways; it can decide it upon evidence heard, or upon the admission or agreement of the parties; satisfying itself, always, in the latter instance, that the agreement is *bona fide* and not for the purpose of deceiving the Court. In the cases in the County Court, and now under consideration, the issues had been made by the pleadings, and the questions of law had been argued and decided. There only remained for trial the question as to the amount of property owned by the Company and its value. Upon those points no testimony was heard or offered, except that contained in the pleadings, and no formal hearing or trial was had.

The parties agreed that for the year 1906 there was omitted from defendant's assessment, property, consisting of cash, stock, bonds and choses in action of the fair cash value of \$2,800,000.00; and acting upon that agreement of fact the Court so adjudged and assessed the property as required by law. The only essential fact agreed upon was the valuation of the defendant's omitted property—a question in issue under the pleadings, both as to amount, and its liability, to any assessment. It is what is commonly called a compromise judgment—either side being in doubt of its case and doing the best it could rather than risk the result of a trial of doubtful issues. The Court having confidence not only in the integrity but in the ability of the parties to protect their respective interests, approved their compromise finding, and put it in the shape of the judgment of the Court. This practice of entering agreed judgments is not unusual, and has been repeatedly upheld by our Court of Appeals.

In *Bank of the Commonwealth v. Hopkins*, 2 Dana, 395, Chief Justice Robertson said:

“It has been frequently decided by this Court, that the legal deduction from a judgment dismissing a suit ‘*agreed*’ is that the parties had, by their agreement, adjusted the subject matter of the controversy in that suit; and the legal effect of such a judgment is therefore, that it will operate as a bar to any other suit between the same parties, on the identical cause of action, thus adjusted by the parties, and merged in the judgment thereon rendered, at their instance, and in consequence of their agreement.”

The foregoing ruling was expressly approved and followed in *Jarboe v. Smith*, 10 B. M. 257 and by the Supreme Court of California in *Merritt v. Campbell*, 47 Cal. 542. See also *Hoover v. Mitchell*, 25 Gratt, 387, and *Phillpotts v. Blaesdell*, 10 Nev. 19.

These decisions do not conflict with the rules universally understood as applying to voluntary dismissals, in the absence of an agreement. To avoid misapprehension on this point the California Court said:

“We are not to be understood as holding that a mere dismissal of an action by the plaintiff under the statute, and without any agreement upon his part to do so, is to be held to constitute a bar to its renewal, nor that a judgment of non-suit, even entered by consent, would have that effect, but only that a *judgment of dismissal*, when based upon and entered in pursuance of the *agreement of the parties*, must be understood, in the absence of anything to the contrary, expressed in the agreement, and contained in the judgment itself, to amount to such an adjustment of the merits of the controversy, by the parties themselves, through the judgment of the Court, as will constitute a defense to another action afterwards brought upon the same cause of action.” (47 Cal. 542.)

The case of *Chicago Union Traction Co. v. State Board of Equalization*, 114 Fed. 557 (affirmed in 207 U. S. 21 *Sub. nom.* *Raymond v. Chicago Traction Co.*), does not run counter to the above rule, because the facts in that case clearly showed, and the Court found, that the method employed by the Illinois State Board of Valuation was so bad that it amounted to a fraud in law. So, there

is nothing in the circumstances attending the manner in which the judgment was arrived at and entered, to render it invalid.

But it is contended by the Commonwealth that a tax suit cannot be compromise, by judgment or otherwise—it being prohibited by Section 52 of the Constitution, which expressly denies to the General Assembly the power to release, extinguish or authorize the releasing or extinguishing, in whole or in part, the indebtedness or liability of any corporation or individual to the Commonwealth, or to any county or municipality thereof. In support of this contention the Commonwealth relies chiefly upon *Cov. v. Cin. Bridge Co. v. Davison, Sheriff*, 31 Ky., L. R. 425, *Ill. Cen. R. R. v. Grayson County*, 30 Ky., L. R. 780, *Shuck v. Lebanon*, 24 Ky., L. R. 451; *Citizens Natl. Bank v. Commonwealth*, 118, Ky., 57; *Commonwealth v. Tilton*, 111 Ky. 341, and *Louisville Railway Co. v. City of Louisville*, 111 Ky. 1.

The facts in most of these cases bring the particular case therein considered so clearly within the prohibition of the Constitution, as to preclude such discussion. And they throw little light upon the question here presented. The case most nearly in point is *City of Louisville v. Louisville Railway Co.* 111 Ky. 1, where the General Council of the City of Louisville attempted to release the Railway Company from a part of its tax indebtedness to the City, by a compromise. The assessment of the property of the Railway Company had been duly made, and had passed beyond the power of review. The amount of the tax due and claimed was definitely fixed, and suits had been filed to enforce collection before the attempted compromise settlement was made. In the course of its opinion and after a review of the cases, the Court drew this exception to the general rule:

"We do not mean to hold that an unliquidated demand by or against the City can be compromised; but we think that when the liability to the City is fixed it can not be relinquished in whole or in part. When the property has been regularly assessed and the assessment passes from the officer making it, and the claim comes into the hands of the collecting officer, we are clearly of opinion that the liability is fixed so that less can not be accepted in satisfaction thereof. When the actions for these taxes were brought more than a year had elapsed after the assessment became final, and all statutory right to question the amount of the assessed valuation had long since passed. Moreover, the tax bills were *prima facie* correct as to amount and appellee's liability therefor was fixed so far as legal procedure before the Board of Assessment, Valuation, and Equalization was concerned."

It is clear from this language of the Court, that the prohibition contained in Section 52 of the Constitution does not reach unliquidated claims and demands of the State. In the *Alexander and Bizot* cases, one tax had been paid; there were no outstanding tax bills or assessment of values against the defendant Company; on the contrary, the proceedings in which the judgments were entered were original court proceedings to begin the imposition and collection of taxes. I conclude that the unliquidated claim presented in those suits was not within the constitutional prohibition and that the County Court had the power to enter the judgment of August 23rd, 1906.

2. But, what was the effect of that judgment as a bar to these proceedings?

The question depends, necessarily, upon the scope and character of the judgment.

The judgment, by its terms, determines merely that personal property consisting of cash, stocks, bonds, and choses in action of the value of \$2,800,000.00 had been omitted from the assessment; that that amount of property was taxed at \$22,680.00, and "that no other or further property of the defendant *set forth in the statements herein for the year 1906* is liable for assessment in this State."

The Commonwealth contends that as the judgment made no enrollment or specification of the omitted property assessed and taxed it is not a bar to this subsequent mandamus proceeding, in which it is so pleaded in bar or against the relief therein asked.

In support of this contention plaintiff relies upon *Revenue Agent v. Clark* 80 Miss., 149, which holds, in substance, that a judgment in a proceeding of this kind is conclusive of only two facts, first, as against the taxpayer that he is the owner, or taxable for the property shown on the roll, and second, as against the taxpayer and the public that the valuation of the enumerated property is as finally shown on the roll. That case, however, recognizes the rule that a plea of *res judicata* in reference to assessment for taxes rests upon the same basis as that of other judgments, and repeats the familiar rule of practice that "one who relies upon the conclusive effect of a prior decision must be able to show that the precise point was decided in that proceeding."

Now, how can that be shown? Are we confined to the four corners of the judgment, or can we look elsewhere for aid in determining what was decided in any particular case?

Freeman lays down the following general rule:

"If the entry of a judgment is so obscure as not to express the final determination with sufficient accuracy, reference may be had to the pleadings and to the entire record. If, with the light thrown upon it by them, its obscurity is dispelled, and its intended signification made apparent, it will be upheld and carried into effect. In case of doubt regarding the signification of a judgment, or of any part thereof, the whole record may be examined for the purpose of removing the doubt. One part of the judgment may be modified or explained or modified by another part; and uncertainties in the judgment may become certain under the light cast upon them by the pleadings and other parts of the record."

Law of Judgments (4th Ed) Sec. 45.

The same author lays down the following rule as to what is essential to make one suit a bar to another suit:

"The cases cited seem to demand the existence of the following identities between two suits, to constitute the first decided a bar of the further prosecution of the second, to-wit: 1, Identity of subject-matter; 2, Identity of cause of action, and 3, Identity of purpose of object. While a concurrence of these identities usually attends when one case is determined by the decision of another, yet nothing is indispensable to impart a conclusive effect to a former judgment, as will be manifested by reference to a few of the reported cases, except identity of issues or issues involved. If any question of fact has been necessarily and directly drawn in question and determined by a final judgment, such determination of

it is generally conclusive in a subsequent action between the same parties and those in privity with them, whether the form or subject matter of the two actions be the same or different. On the other hand, if the two actions are upon different causes, a judgment in one cannot affect the other, though the subject matter of each is the same." (Ib. Sec. 252.)

Now, when we compare the issues of this mandamus suit with the judgment, pleadings and proceedings of the Alexander and Bizot County Court suits, which are pleaded in bar of this mandamus suit, we find the two identities of subject matter and purpose or object, but that the third essential identity of cause of action is wanting.

A practical application of the rule is found in the cases of *Schuster v. White*, 19 Ky. L. R. 1861, and *Schuster v. White*, 20 Ky. L. R. 1852, 106 Ky. 317, and *Northern Assurance Co. v. Grand View Bldg. Assn.* 102 N. W. 246 (Appeal reported in 203 U. S. 106). In the *Schuster and White* cases, which were between the same parties, it was held that a judgment dismissing a suit upon a bill for board (which can be sustained only under an express contract), was not a bar to a suit for nursing and attention, which can be sustained upon an implied contract. In *Northern Assurance Co. v. Grand View Bldg. Assn.*, it was held that an adverse judgment in a suit at law against the holder of a fire insurance policy was not a bar to a suit in equity to reform the policy and recover upon it when reformed.

The cause of action in the County Court cases was a *new assessment and taxation by the Court* of omitted property over and above the half million assessment, while in the mandamus suit the cause of action is the *re-*

*establishment of the original assessment* for fifty millions of dollars made by County Assessor Herr which if so re-established, would become an entirely different kind of assessment, and would be effective and obligatory upon the defendant Company, regardless of the subsequent proceedings in the County Court suits.

Reading the compromise judgment in connection with the pleadings, as we may, it is plain that while the subject matter and the purpose of the County Court suits and this mandamus suit are identical, the causes of action and the evidence necessary to sustain them are entirely different. (Freeman on judgments, Sec. 259.).

I have not overlooked *Commonwealth v. Bacon*, 31 Ky. L. R. 472, relied upon by defendant. That decision is not at all in conflict with the rule above laid down by Freeman. On the contrary, it supports the general rule, and points out that the *cause of acting* was the same in each suit, viz, the omission of property from a given assessment.

I conclude, therefore, that the judgment in the *Alexander and Bizot* cases in the County Court constitutes no bar to this mandamus suit; but as that judgment is valid and binding upon the parties, and has not been appealed from, the County Court suit have on appeal to vacate that judgment, must fall and will have to be dismissed.

II. Going back to the assessment made by County Assessor Herr, the next question for decision is: Did the County Board of Supervisors have the power on February 12th, 1906, to reduce the assessment of defendant's property from \$50,000,000, to \$500,000.00, as it did, or attempted to do?

The duties of the County Assessor are fixed by Statute, and briefly, are as follows:

By Section 4049, Kentucky Statutes, it is provided, as to real estate, that if the owner fails to list the same, the Assessor shall, nevertheless, list all lands in his county.

Section 4053 provides that the assessor, from his own knowledge and from the statement of the person listing the property for taxation, and such other evidence as he may be able to obtain upon oath of witnesses sworn by him, shall fix the value upon all the estate listed with him for taxation at its fair cash value. If the value fixed by the assessor is greater than that fixed by the taxpayer, it is the duty of the assessor to notify the taxpayer, at the time of the assessment, the amount of such increase, and of the time and place of the meeting of the Board of Supervisors. This section proceeds: "The assessor shall report to the Board of Supervisors a list of all taxpayers in the County whose tax lists have been added to or increased by him after receiving them from the hands of the taxpayer, together with a short statement."

By Section 4061 it is provided that the assessor shall report to the county clerk the names of all persons refusing to give a full and complete list of their property, or refusing to make oath of the same, and the clerk shall notify the supervisors, and if the supervisors fail to get a full and complete list of the property of such person, and so notify the clerk, then the county court, after giving five days' notice to such persons, shall proceed to determine and ascertain the property and its value, and shall impose on such persons a fine not exceeding one hundred dollars.

Section 4062 provides that there shall be a trial before the County Court of those who have been delinquent in giving in their lists.

By Section 4064 it is provided that any person who has failed to give in his list of taxable property, in whole or in part, because he was not called upon by the assessor, may at any time, and it is hereby made his duty, after the assessor has returned his books, to list the same with the county clerk; and

Section 4065 provides that the assessor or his assistant, before he returns any one in default, shall apply at his residence (if a corporation at the place of business) for a list of his taxable property, and if he fails to attend and give in such list, then the assessor shall report the person to the County Clerk, and the Clerk shall report such person to the supervisors, who shall assess and value his property.

The defendant did not return the statutory list of its property to the assessor, and that officer, upon his own motion and from such information as he could obtain from other sources—principally from Poor's Railroad Manual—fixed the assessment of defendant at "\$50,000,000.00 Bonds," and sent to Weaver, defendant's agent, a written notice of that fact under date of December 30th, 1906.

The Board of Supervisors of Taxes met on the first Monday in January, for the purpose of revising the work of the assessor. The duties of that Board are substantially as follows:

Section 4120, Kentucky Statutes, provides that the Board of Supervisors shall make a careful examination of the assessor's books and each individual list thereof, and may increase or decrease any list; but the Board shall not reduce or raise any assessment unless the evidence be clear and unmistakeable that the valuation is not a fair cash value, and shall list all property omitted by the assessor which may be subject to taxation in the county, and shall correct any errors of the assessor.

By Section 4122 it is provided that the Sheriff shall notify all such taxpayers whose lists have been increased or assessed by the Board, and also notify them of the time to which the Board adjourned. This is in reference to the provisions of Section 4121, which determines as to the first meeting of the Board; the second meeting being fixed by Section 4123. It is finally provided that any informality or irregularity in the execution of their duties as supervisors, or any failure of duty on their part, shall not render any assessment invalid.

By Section 4125 it is provided that the Board of Supervisors shall keep a record of their proceedings and correct the tax-books thereby. They shall annex their certificate to the tax-books that they have examined and approved the same, and the number of days they were actually engaged, and shall return the same, with the record of their proceedings, to the County Clerk, on or before the 10th day of February.

The list which is required to be presented to the taxpayers and which is required to make out is provided for by Section 4058.

In the case at bar the Board of Supervisors reduced the assessment made by the assessor from \$50,000,000.00 to \$500,000.00, but this reduction was not made until February 12, 1906, whereas, following literally the law, the Board should have adjourned on February 10th. Was this failure of the Board to correct this assessment on or before February 10th fatal? In other words, is this time mandatory or directory?

As the defendant had not returned a list to the assessor it is clear that the assessor had no right to make the assessment. It was his duty under Section 4061, to report the defendant for refusal to list, to the County Clerk, and the Clerk, in turn, is required to notify the

Supervisors who are to get a full and complete list from the delinquent. If that Board fails, then under Section 4062 the County Court makes the assessment. *Trigg v. Glasgow*, 2 Bush, 594; *Clark v. Belknap*, 11 Ky. L. R. 791. The fact that the Company appeared before the Board of Supervisors and contested the assessment cannot change the law or make valid an invalid act of the assessor. The power to assess had passed from the assessor to the Board of Supervisors. Strictly speaking, therefore, the Board of Supervisors, had before it, not the review of the assessment made by the County Assessor, but the question of making an original assessment, and if the act of the Board on February 12th, 1906 in fixing the assessment at \$500,000.00 be treated as the original assessment, and void because it was made after February 10th, then there was no valid assessment whatever. But should the Commonwealth lose its taxes for a mere failure of this Board to adjourn on a certain named date? The Statute (Sec. 4125) does not invalidate the acts of the Board performed after February 10th, it merely requires the Board to return the corrected assessor's books "to the County Clerk" on or before the tenth day of February. The succeeding Section (4126) provides that the clerk shall certify the acts of the Supervisors to the County Court and that Court is required to enter the fact of record and also the amount due the Supervisors for their services. Section 4127 fixes the compensation of the supervisors at \$3.00 per day and provides for its payment; while the next and closing Section (4128) of the Article relating to the Board of Supervisors, reads as follows:

"Any informality or irregularity in the execution of their duties as supervisors, and any failure of duty on their part, shall not render any assessment invalid. But any taxpayer feeling himself aggrieved

by the action of said board of supervisors, may appeal to the judge of the County Court within ten days after the final adjournment of said board. It shall be the duty of the County attorney to appear and defend for the board."

When we thus read the several sections of the statute together it is plain that the provisions requiring the Supervisors to return the tax-books to the County Clerk on or before the tenth day of February was not intended as a limitation upon their powers, but is a mere direction for the purpose of speeding the collection of the tax, and possibly to limit the pay of the Supervisors. In short, the provision is directory and not mandatory. Cooley on Taxation, page 480, says:

"In one of the most recent cases in which this has been attempted, the general doctrine is stated as follows:

"There are undoubtedly many statutory requisitions intended for the guide of officers in the conduct of business devolved upon them, which do not limit their power or render its exercise in disregard of the requisitions ineffectual. Such generally are regulations designed to secure order, system and dispatch in proceedings and by a disregard of which the right of parties interested cannot be injuriously affected. Provisions of this character are not usually regarded as mandatory, unless accompanied by negative words, importing that the act required shall not be done in any other manner or time than that designated."

Again, at page 485, the learned author says:

"On the other hand, the requirement of an official bond or oath from an officer is for the protection of the public and not of the taxpayer. So in general the fixing of an exact time for the doing of an act is

only directory where it is not fixed for the purpose of giving the party a hearing, or for any other purpose important to him."

In a note to this the following is cited from a case in California:

"Where action is to be taken within a certain time, the mere failure of a public officer or of a public Board to act within the set time is not fatal, and the requirement as to this may be held directory."

See also *Blumm v. Commonwealth*, 7 Bush 321; *Mossett v. N. & C. Bridge Co.*, 106 Ky. 518; *Board of Councilmen of Frankfort v. Farmers Bank*, 22 Ky., L. R. 1738, as illustrative cases.

That this construction is the correct one is made clear beyond question by the closing Section (4128) of the Statute, which expressly provides that no assessment shall be rendered, invalid by any failure of duty on the part of the supervisors. Moreover, if the Board of Supervisors were without power in 1906 to act after February 10th, they have no power to act now; and, on the contrary, if the Board can now reassemble and review the assessment, its action in that respect on February 12th, 1906, was valid.

But it is charged in the petition that the reduction of the assessment from fifty million to five hundred thousand dollars was the result of a misprision and mistake or was illegally, wrongfully, arbitrarily, and capriciously made by said Board of Supervisors, or was procured by the fraud and misconduct of the defendant Company. This charge is not sustained by the proof. The Board did not hear evidence under oath, but it heard oral statements and arguments by Assessor Herr and his attorney, by the attorney of the defendant and by the County Attorney. The attorney for the defendant Company made

the contention which he had uniformly made—that neither the County Assessor or the Board of Supervisors had the power to assess the Southern Pacific Company, because it could be assessed upon its franchise only, as a railroad, and by the State Board of Valuation & Assessment under Sections 4077 and 4078 of the Kentucky Statutes. The Board of Supervisors was not unanimous in its opinion either as to its power or duty; and after at least two hearings fixed the assessment of defendant's personalty at half a million dollars, upon which the tax was paid. The proceedings of the Board in arriving at this conclusion was undoubtedly informal, and perhaps irregular in some respects; but I am thoroughly satisfied from the evidence, including the personal of the Board, that the conclusion was honestly reached, and was not procured by the fraud or misconduct of the defendant, or its agents or employees. The informality and irregularity of the Supervisors is expressly guarded against and waived by Section 4128 of the Kentucky Statutes, above quoted.

I conclude, therefore, that the action of the Board of Supervisors on February 12th, 1906, whether it be treated as a review of the assessment returned by the County Assessor, or as an original assessment by the Board of Supervisors (the latter view, in my opinion, being the correct view) was a valid exercise of power by the Board and cannot now be reviewed in this mandamus suit.

The other case on trial—the County Court case, here on appeal, to vacate the judgments in the Alexander and Bizot cases and to retry those cases—having been disposed of when those judgments were heretofore sustained by this opinion; it would perhaps be unnecessary to decide the other questions presented by the pleadings. However, since those issues have been so fully prepared

and argued by counsel, and necessarily considered in the decision of the preceding questions, I will give my conclusions, without amplification, upon the remaining questions raised by the pleadings and covered by the briefs and oral argument.

III. The Southern Pacific Company has always contended that it is assessable only upon its franchise as a railroad corporation; that it made the return for 1906 to the State Auditor required by Section 4078 of Kentucky Statutes; that its franchise was accordingly assessed by the State Board of Valuation & Assessment under Section 4077, at \$1,000,000.00 and that it has paid the tax thereon. The Commonwealth on the other hand, contends that the Southern Pacific Company is not a railroad corporation but is a mere business corporation and must pay taxes upon whatever property it owns.

Section 4077 of the Kentucky Statutes provides as follows:

“Every railway company or corporation, and every incorporated bank, trust company, guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace car company, dining car company, sleeping car company, chair-car company, and every other like company, corporation or association, also every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax

thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The Auditor, Treasurer and Secretary of State are hereby constituted a Board of Valuation and Assessment, for fixing the value of said franchise, except as to turnpike companies, which are provided for in section 4095 of this article. the place or places where such local taxes are to be paid by other corporations on their franchise, and how apportioned, where more than one jurisdiction is entitled to a share of such tax, shall be determined by the Board of Valuation and Assessment, and for the discharge of such other duties as may be imposed on them by this act. The Auditor shall be chairman of said board, and shall convene the same from time to time, as the business of the board may require."

Section 4078, requires each corporation above named to file annually with the State Auditor a detailed statement of its financial and business affairs, for use in valuing the franchise, while section 4079 provides for cases where the line of the corporation extends beyond the limits of the State or County. Section 4080 provides a method of valuing the franchise of foreign corporations doing business in this State.

Under the strict letter of these statutes the defendant the Southern Pacific Company may not be taxed at all, since it is neither a railway company or corporation, in name at least, nor a foreign corporation, and has no line or property in Kentucky and does no business in the State.

The first section of the original act of 1884, created the Southern Pacific Company and made it "capable in law to purchase, grant, sell or receive, in trust or other-

wise, all kinds of personal and real property, . . . and to contract and be contracted with, sue and be sued, plead and be impleaded, appear and prosecute to final judgments all suits or actions at law or in equity in all courts and places . . . and generally to do and execute all acts, matters and things which may be deemed necessary or convenient to carry into effect the powers and privileges herein granted. . . . Provided, however, that said corporation shall not have power to make joint stock with, lease, own or operate any railroad within the State of Kentucky."

The second section of the act specifically enlarged the foregoing powers, as follows:

"The said corporation is hereby authorized and empowered to contract for and acquire, by purchase or otherwise, bonds, stocks, obligations and securities of any corporation, company, or association, now existing or hereafter formed or constituted, and bonds, obligations, and securities of any individuals, State, territory, government, or local authorities whatsoever, and to enter into contracts with any corporation, company, or association, individuals, State, territory, government, or local authorities in respect of the construction, establishment, acquisition, owning, equipment, leasing, maintenance, or operation of any railroads, telegraphs, or steamship lines, or any public or private improvements, or any appurtenances thereof, in any State or territory of the United States, or in any foreign country; and to buy, hold, sell, and deal in all bonds of public and private stocks, bonds, and securities, and said corporation may borrow and loan money, issue its own bonds or other evidences of indebtedness, and sell, negotiate, and pledge the same to such amounts,

upon such terms, and in such manner as may from time to time be determined by the directors of said corporation, and it may mortgage all, or any part of its property, assets, and franchises to secure such bonds and the interest thereon, on such terms and conditions as shall on that behalf be prescribed by its Board of Directors."

The Company was, furthermore, expressly prohibited by the eighth section from owning and operating any lottery or bank.

By the Act of 1888, the first Section of the Act of 1884 was amended by adding thereto so as to make the final clause of the section read as follows:

"Provided, however, that said corporation shall not have power to make joint stock with, lease, own, or operate any railroad within the State of Kentucky, except subject to and in conformity with the provisions of the laws of the State of Kentucky applicable to railroads, and acquiring no special rights that may be possessed by any railroads in the State except the general and ordinary rights of common carriers as possessed by railroads generally."

The effect of the amendment was to authorize the defendant to lease, own and operate a railroad in Kentucky and by comity, in such other States as would permit the exercise therein of foreign corporate powers.

At this time and for many years past the Southern Pacific Company has operated under leases to it 6,000 miles of main track of railroad and 4,724 miles of ferries and water lines; and it has operated directly, with its own 60,000 employees, the following railroads and water lines:

## RAILROADS.

	Miles.
Central Pacific Railway .....	1,489.26
Oregon & California Railroad (Oregon) .....	666.16
South Pacific Coast R'y (California) .....	100.36
Southern Pacific Railroad Company .....	3,394.28
New Mexico & Arizona R. R. ....	88.19
Sonora Railway (Mexico) .....	262.60

## WATER LINES.

New York to New Orleans (Ocean line) .....	1,800.00
New Orleans to Havana (Ocean line) .....	700.00
New York to Galveston (Ocean line) .....	1,900.00
Certain other ferries and water lines.....	324.69

All of these railroads, as well as the steamship lines, are operated directly by the Southern Pacific Company.

Besides this the Southern Pacific Company owns all, or a majority of the stock in the following railroads:

	Miles.
Galveston, Harrisburg & San Antonio R'y (Texas) .....	1,342.71
Houston, East & West Texas R'y .....	190.94
Houston & Shreveport R. R. ....	39.78
Houston & Texas Central .....	789.01
Iberia & Vermillion R. R. (Louisiana) .....	15.64
Louisiana Western R. R. ....	198.28
Morgan's Louisiana & Texas R. R. & S. S. ....	350.95
Nevada & California R'y. ....	330.48
Texas & New Orleans R. R. ....	446.18
Or a total of .....	3,703.97

The defendant's report filed with the State Auditor for 1906 shows the following valuation of said property, in round numbers.

1 Stock in foreign corporations (at par)	403,000,000.00
2 Bonds (par value) .....	15,000,000.00
3 Ships, tugs and steamers .....	8,000,000.00

A total of over .....\$426,000,000.00

In the Southern Pacific Company a "railway company corporation," or a "like company or corporation," or a "corporation.....having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service."

If it be a corporation of either kind it is within the provisions of Section 4077 of the Kentucky Statutes and liable for a franchise tax.

The State Board of Valuation & Assessment decided the question against the defendant and required it to pay a franchise tax. These facts were all taken into consideration by that Board in fixing the value of defendant's franchise. That the Board may have erred either in fixing that value too high or too low, is of no concern here.

If the defendant was within the Statute, the State Board had the right to assess its franchise.

It is reasonably clear that if the Southern Pacific Company be not technically a "railway company or corporation," it certainly is a "like company" and "performs a public service." (James, Auditor v. Ky. Refining Co. 113 S. W. 468.)

It was required, by Section 4078, to make a report to the Auditor, but having no lines in Kentucky there was nothing for the Railroad Commission to assess. The only way of making a valid assessment under the Statutes as they stood, was to take into consideration the

personal property in fixing the franchise. This, the State Board of Valuation & Assessment did; and in doing so, it, in my opinion, was acting within its powers. It was its duty under the law to take into consideration all the personal property of the defendant in fixing the value of its franchise. (*Commonwealth v. Cum. Tel. & Tel. Co.*, 30 Ky. L. R. 723.)

IV. The conclusion heretofore reached that the Southern Pacific Company is assessable only by the State Board of Valuation & Assessment, is reenforced by the practical construction that has been given to this Statute by the State officers from 1893 up to the present time. During all that time the Southern Pacific Company has filed its report annually as required by Sections 4077-78 and the other Sections of the Kentucky Statutes relating to franchise taxes, the same being made out upon the regular blanks prepared and furnished by the State officers for that purpose. Furthermore, the tax thus fixed by the State Board has been regularly and annually paid. The fact that the State Board fixed the valuation of the franchise at only one million dollars, is criticized by counsel for the Commonwealth upon the ground that it was not the result of any arithmetical conclusion, but that it was in substance an arbitrary assessment and valuation. That it was practically an arbitrary assessment and valuation is not disputed by the defendant. It is contended, however, that this arbitrary assessment was necessary by reason of the circumstances of the case. The defendant was not specifically embraced within the terms of the Statute, and in making the assessment the State Board of Valuation & Assessment gave what it considered a fair and reasonable interpretation to the Statute under the circumstances of the situation. There can be no question that this action upon the part of the State

Board, in each instance, was entirely honest and a bona fide attempt to apply the taxing statutes to the case before it. It should be borne in mind that there had always been a question and a contention as to how the defendant was assessable, and who was to do it, or whether it was taxable at all. For the year 1906, the defendant paid, first, the assessment upon the \$500,000.00 valuation made by the Jefferson County Board of Supervisors, next it paid the assessment for the same year upon its franchise valued at a million dollars by the State Board of Valuation & Assessment; and for the third time it paid \$22,680.00 upon the assessment made by the Jefferson County Court in the Alexander and Bizot suits. These three separate taxes were paid on assessments made in three different ways upon the defendant's property for the year 1906. The doubt as to how and where the defendant was to be assessed arose in each of those cases, and necessarily threw more or less doubt upon the validity of any one of the different assessments. Prior to 1906 the County Assessor had not attempted to assess this personal property, this was his first attempt along that line. But the one continuous and persistent Board that has continued to assess the defendant to such an extent as to practically make a rule for other state officers was the State Board of Valuation & Assessment. This continued interpretation of the Statute is specifically relied upon in the answer as a defense to this action. It is to be noted that after this practical construction had been put upon the Statute in the year 1902, a full revision of the revenue laws of Kentucky was made, and no change was made in the wording of Section 4077. Under the authorities this is a significant fact.

In *New Haven R. R. Co. v. Interstate Commerce Commission* 200 U. S. 401, Mr. Justice White, delivering the

opinion of the court and after stating that the court conceded that the interpretation given by the Interstate Commerce Commission to the Act to Regulate Commerce, was binding, says:

"We make this concession because we think we are constrained to so do, in consequence of the familiar rule that a construction made by a body charged with the enforcement of a statute, which construction has long obtained in practical execution and has been impliedly sanctioned by the re-enactment of the statute without alteration in the particulars construed, when not plainly erroneous, must be treated as read into the Statute."

In *United States v. Compania*, 209 U. S. 339, the Court said:

"We have said that when the meaning of a statute is doubtful great weight should be given to the construction placed upon it by the department charged with its execution (citing authorities). And we have decided that the re-enactment by Congress without change of a statute which had previously received long-continued executive construction is an adoption by Congress of such construction. *United States v. Falk* 204, U. S. 152."

It will be noted that Mr. Justice White and Mr. Justice Peckham concurred in the foregoing decision solely because of the prior administrative construction of the statute.

The new provision in the new revenue statute of 1906 is significant, and has a strong bearing upon this question. The Committee having the framing of the new rev-

enue law had before it the case of such a corporation as the Southern Pacific Company, however, it did not in any way change the language of Section 4077, but retained it as it had theretofore appeared. It also added to Section 4081 a provision which now embraces in express terms the method heretofore employed by the State Board of Valuation & Assessment.

The new provision reads as follows:

“But if any such railroad or other corporation organized under the laws of the State have all of its lines, outside of this State, the said Board shall fix the value of its entire capital stock as hereinbefore provided, and apportion to this State for taxation therein the proper proportion and not less than one per cent of its said capital stock, and the amount so apportioned shall be the value of its intangible property, including its corporate franchise, stocks, bonds, securities, and choses in action, subject to taxation in this State and in the county, city, town and district where its principal place of business in this State may be located.”

At that time there was not much doubt under the practice of the State Board that such a company as the Southern Pacific Company was included in the list of companies required to make a franchise report; but the Legislature in order to put the question at rest and in a more permanent form, provided this more certain rule by which the Board should be governed in the apportionment of the franchise.

The doctrine of practical construction has been applied in all of its strength by the courts of Kentucky. The authorities on this subject are thoroughly reviewed in the late case of *Commonwealth of Kentucky v. Gregory*,

121 Ky. 256. The question in that case was whether a domestic insurance company was required to procure a license for each of its agents. Section 761 of the Kentucky Statutes provides:

“There shall be collected by the Commissioner and paid into the State Treasury, to the credit of the Insurance Department, the following fees . . . for license to each agent of life companies and certificate of office for each \$5.”

By Section 753 it was provided:

“If upon examination he (commissioner) is of opinion that any domestic insurance company is insolvent or has exceeded its powers or has failed to comply with any provision of law, . . . he shall revoke or suspend all licenses issued to it or its agents.”

The Court held that, notwithstanding this language, agents of domestic insurance companies were not required to take out any license. The Court then said:

“But if there is any doubt upon this question it is obliterated by the long-continued contemporaneous construction of these statutes, covering the period of at least twenty-five years or more, participated in by all the officers of the State engaged in executing this law, as well as by the insurance companies and their agents operating under it. The answer of appellee in this case pleads expressly that it has always been the construction placed upon these statutes by the officers of the State until within the last few months, and by insurance companies created by the laws of this State, that domestic insurance companies were not required to procure licenses for

their agents, and that never until within the last few months did the State of Kentucky ever demand or require a license of an agent of a domestic company, nor issue a license to such an agent, nor receive any license fee from such an agent. These allegations of the answer were admitted by the demurrer to be true.

"In the case of *Harrison vs. Commonwealth*, 83 Ky., 162, 7 K. L. R. 74, this court held that the statute allowing the county assessor 'fifteen cents for each person's list of taxable property' should be construed as allowing him 15 cents for each name of a person returned on the assessor's books, whether he had any taxable property or not. And it reached this conclusion largely on account of the long-continued contemporaneous construction of the statute to this effect by the officers of the law."

Speaking on that subject the Court said:

"The very fact that persons, and even courts, are differing as to its meaning tends strongly to show that it is at least of doubtful import. It is alleged in the answer, and admitted by the demurrer to it, that the State, through its county courts and its executive departments, has for many years allowed and paid for each list, whether it embraced property or not. The executive branch of a government must necessarily give a construction to the laws which it must execute; and if its construction has been followed for years, and in view of and without interference by the law-making power, then such contemporaneous and long continued construction should not be departed from without the most cogent reasons. A long continued practice under a statute, under such circumstances, ripens into an authoritative construction of it."

In *Clark's Run, etc., Turnpike Co. v. Commonwealth*, 96 Ky., 525, 16 K. L. R. 681, 29 S. W. 360, the Court said:

"If we were called on to construe these acts without regard to the construction adopted by all concerned some thirty-odd years ago, we might readily agree with the appellee. What we conclude is that the construction contended for by the appellant is not an inadmissible one, and, in view of this contemporaneous interpretation of the meaning of the acts and the long and continued usage under the law by those claiming a right under it, we think their construction the proper one. (*Barbour v. City of Louisville*, 83 Ky. 95, 7 K. L. R. 17; *Louisville Tobacco Warehouse Co. v. Commonwealth*, 106 Ky., 171, 20 K. L. R. 1747, 49 S. W. 1069, 57 L. R. A. 33.)"

In *Barbour v. City of Louisville*, 83 Ky. 95 the practical construction there relied on had lasted for only three years, as appears by the statement on page 102 of the opinion.

*Louisville Tobacco Warehouse Co. v. Commonwealth*, 106 Ky., 165, is directly in point. The question there determined was as to the duty of an ordinary private corporation to report under Section 4077. The controversy arose certainly not later than 1898, which was only six years after the act was passed. On March 19, 1898, as shown in the opinion at page 179, the Legislature passed an act providing that "no assessment for city taxes shall be made by any assessor or Board of Valuation and Assessment of the franchise of any private business, mercantile or manufacturing corporation whose property is not devoted to a public use." At page 180, the Court says:

"The statute was given this practical construction by the executive officers of the State during two administrations. The Legislature was well aware of the construction so put upon it, and having not only acquiesced in it, but expressly adopted it, it should not now be departed from."

We have here the same situation with regard to the Southern Pacific Company. The practical construction given to Section 4077 was, first, that it was included in it; second, that the subsequent sections providing for an apportionment necessarily applied to it; and this practical construction was made certain by the amendment of 1906, wherein it was provided that in cases of this kind the apportionment should be not less than one per cent. And the fact that this construction was put upon the Statute by the State officers over the protest of the Southern Pacific Company rather than with its consent, only emphasizes the effect of that construction. The assessment made by the State Board of Valuation and Assessment was in my opinion a legal and valid assessment and the payment of the tax thereon is a bar to the assessment attempted by the County officials.

V. Have these assets which it is now claimed should be taxed, a situs in Kentucky? If not, they cannot be taxed here. The modern doctrine upon the subject of taxing personal property is found in the following language taken from the late case of the Union Refrigerator Co. v. Kentucky, 199 U. S. 194, which was originally decided in this Court:

"The power of taxation, indispensable to the existence of every civilized government is exercised upon the assumption of an equivalent rendered to

the taxpayer in the protection of his person and property in adding to the value of such property or in the creation and maintenance of public convenience in which he shares, such, for instance, as roads, bridges, sidewalks, pavements, and schools for the education of his children. If the taxing power be in no position to render these services, or otherwise to benefit the person or property taxed, and such property be wholly within the taxing powers of another State, to which it may be said to owe an allegiance and to which it looks for protection, the taxation of such property within the domicile of the owner partakes rather of the nature of an extortion than a tax, and has been repeatedly held by this Court to be beyond the power of the Legislature and a taking of property without due process of law."

The Court held that refrigerator railroad cars, belonging to a Kentucky corporation but situated beyond the boundaries of Kentucky could not be taxed by Kentucky. See also *Del. Lack. & W. R. R. Co. v. Pennsylvania*, 198 U. S. 341; and *Lou. & Jeff Ferry Co. v. Kentucky*, 188, Ky. 394.

Under the principle of those decisions it is clear that the ships of the defendant which are visible, tangible personal property and have never been within the limits of the State or the protecting power of this Commonwealth, cannot be taxed here. There is more difficulty, however, as to the stocks, bonds and securities of the defendant. That question was mooted and left undecided in the *Union Refrigerator Case*, a decision thereof not being necessary for the disposition of that case. In the case at bar the stocks, bonds and securities of defendant are held by the company's officers and agents at its principal offices in

New York and San Francisco; none of them have ever been in the State of Kentucky. The question of the situs of intangible personal property for purpose of taxation has been in a state of rather rapid change in recent years. It might be speaking with more exactness to say that the change has been an evolution towards giving to intangible personalty the same independent situs which was so tardily accorded to tangible personalty. It is, therefore, scarcely necessary or profitable to review the earlier cases upon the subject, it will be sufficient to consider the latest declaration of our courts of last resort.

In the late case of *Metropolitan Life Ins. Co. v. New Orleans* 205, U. S. 395, both the Supreme Court of Louisiana and the Supreme Court of the United States sustained a tax on credits arising out of loans made by the local agent of a foreign insurance company to its local policy holders. The lending, the payment of interest and the final payment of the loan were all made by the local agent in New Orleans, though the notes and securities given therefor, were kept in New York in the meantime.

The Court expressly recognized the doctrine that personal property may be taxed in its permanent abiding place although the domicile of the owner is elsewhere. After a full review of the case however, the Court sustained the tax upon the idea that the insurance company was engaging in money-lending in Louisiana and the State had the right to tax the capital so invested in the State precisely as it taxed the capital of its own citizens engaged in the same business; and that the notes executed and paid in the State of Louisiana did not acquire a situs in New York by being sent there merely for safe keeping. As the decision is so directly in point, I quote the language of the Court at some length:

"In this case the controlling consideration was the presence in the State of the capital employed in the business of lending money, and the fact that the notes were not continuously present was regarded as immaterial. It is impossible to distinguish the case now before us from the Bristol case. Here the loans were negotiated, the notes signed, the security taken, the interest collected, and the debts paid within the State. The notes and securities were in Louisiana whenever the business exigencies required them to be there. Their removal with the intent that they shall return whenever needed, their long continued though not permanent absence can not have the effect of releasing them as the representatives of investments in business in the State, from its taxing power. The law may well regard the place of their origin, to which they intend to return, as their true home, and leave out of account temporary absences, however long continued. Moreover, neither the fiction that personal property, follows the domicile of its owner nor the doctrine that credits evidenced by bonds or notes may have the situs of the latter, can be allowed to obscure the truth. *Blackstone v. Miller*, 188 U. S. 189. We are not dealing here merely with a single credit or a series of separate credits, but with a business. The insurance company chose to enter into the business of lending money within the State of Louisiana, and employs a local agent to conduct that business. It was conducted under the laws of the State. The State undertook to tax the capital employed in the business precisely as it taxed the capital of its own citizens in like situation. For the purpose of arriving at the amount of capital actually employed it caused the credits arising out of

the business to be assessed. We think the State had the power to do this, and that the foreigner doing business can not escape taxation upon his capital by removing temporarily from the State evidences of credits in the form of notes. Under such circumstances they have a taxable situs in the State of their origin."

The same rule obtains in Kentucky. In *Commonwealth vs. Dun & Co.* 31 K. L. R. 561, it appeared that the business of R. G. Dun & Co. was conducted by four trustees under the will of R. G. Dun for the sole benefit of his estate, and that all of the trustees and the chief office of the company were located in the State of New York. It was shown that Dun & Co. had established an agency and office in Louisville, Kentucky, and had transacted a portion of its business there ever since; that it had certain cash on hand and in banks, and that there was due to the Louisville office, from subscribers, certain other amounts. The question was whether this case and these accounts were taxable in Kentucky, notwithstanding the fact that their owner lived in New York. It will be observed that this is purely intangible property. The Court held that this business was taxable. In the course of its opinion, the Court said:

"In this case we have a non-resident with an established business, agents residing here who managed it, and an income of over forty thousand dollars annually, its business received the same protection as the business of the citizen under the laws of the State, and should be compelled to share equally the burden. The obligation to pay taxes on property for the support of the government arises from the fact that it is under the protection of the govern-

ment. Persons should not be permitted to avail themselves of the benefit of the laws of the State in the conduct of their business within its limits and then escape their due contribution to the public needs."

The opinion then cites fully from the case of *Bristol v. Washington County*, 177 U. S. 144.

A more elaborate opinion on this same subject was delivered by the Court of Appeals in the still later case of *Higgins, Trustee v. Commonwealth*, 31 K. L. R. 658. In that case a certain fiduciary having title to a trust estate lived in Kentucky, where he kept the estate, managing it, investing and reinvesting it. The beneficiary of the estate was a non-resident. The Court examined the question elaborately and after citing and distinguishing other Kentucky cases, reached this conclusion.

"There is, of course, a marked distinction between what is known as corporeal personal property, such as live stock, lumber, or other material, and intangible personal property, like notes, bonds, and other securities. And it is generally recognized that tangible personal property has an actual situs at the place where it is located, without respect to the domicile of the owner; whereas the situs of intangible personal property for purposes of taxation depends altogether on legislative enactment or judicial construction. It does not always follow the beneficial owner, but may be taxed at the place where the person resides who has the control and management of the securities, who lends out the money, collects the interest, and exercises other acts of ownership and control over it; and where it may be said to be permanently located as much so as if the actual owner

resided where it was. For many purposes the domicile of the owner is deemed the situs of his personal property but this is only a fiction from motives of convenience, and is not of the universal application, and yields to the actual situs of the property when justice requires that it should, and is not allowed to be a controlling feature in matters of taxation." (Authorities omitted.)

In my opinion this recent elaborate and carefully considered opinion by the Kentucky Court of Appeals is conclusive of the question now under consideration. The property is taxable in the situs of its permanent abode. This property having been always and permanently beyond the limits of Kentucky, has no situs here for purposes of taxation; and the fact that it has or has not been taxed by the foreign jurisdiction neither enlarges nor diminishes the power of the Commonwealth of Kentucky in that respect. (*Buck v. Beach*, 906, U. S. 392.)

It follows that both petitions will have to be dismissed.

SHACKELFORD MILLER,  
*Judge.*

Feby. 27th, 1909.

N. B. HAYS, *p. q.*

HUMPHREY, DAVIE & HUMPHREY, *p. d.*

Be it remembered that on the 10th day of  
636 March, 1909, at a Court of Appeals held at the  
Capital in Frankfort, the following order was  
entered:

Commonwealth by &c. vs. Southern Pacific Company,  
Jefferson.

Came parties by counsel and filed agreement and  
moved the Court to docket this case for the present term,  
advance and to grant an oral argument herein, which  
motion is submitted.

The motion referred to in the above order is as fol-  
lows:

637 COURT OF APPEALS OF KENTUCKY.

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COMMONWEALTH OF KENTUCKY, ETC., - - - *Appellant,*

*vs.* MOTION TO ADVANCE AND FOR ORAL  
ARGUMENT.

SOUTHERN PACIFIC COMPANY - - - - - *Appellee.*

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Now come counsel for appellant and appellee and  
file and make this their joint motion to advance and for  
oral argument in the above styled case and as grounds  
therefor assign the following:

First. That this case involves the taxable situs of  
the ocean going steamships of appellee.

Second. That this case involves the constitutionality  
of Section 5 of the Acts of 1906, page 130, and particu-  
larly that portion thereof which provides:

"But if any such railroad or other corporation  
organized under the laws of this State, have all of its

lines outside of this State, the said board shall fix the value of its entire capital stock as hereinbefore provided, and apportion to this State for taxation therein the proper proportion and not less than one per cent of its said capital stock, and the amount so apportioned shall be the value of its intangible property, including its corporate franchise, stocks, bonds, securities, and  
 638 choses in action, subject to taxation in this State and in the county, city, town and district where its principal place of business in this State may be located."

Third. That said case involves the taxable situs of the stocks and bonds of appellee, and the officer or board authorized to assess same.

Fourth. That it is the contention of appellant that the franchise of appellee can not be assessed by the State Board of Valuation and Assessment under said act because such assessment must be made "on either the capitalization, mileage or earnings basis," and there is neither tangible property nor mileage in Kentucky and no earnings made in Kentucky and Kentucky can not assess earnings made in other States. That the stocks and bonds should be assessed by the County Assessing officers and not by said Board.

Fifth. That this case is altogether different from the other Southern Pacific cases pending in this Court because no prior judgment has been entered involving the years 1907 and 1908, and the assessment against appellee was made under the Act of 1906 above referred to.

M. J. HOLT,

*Attorney for Appellant.*

HUMPHREY, DAVIE & HUMPHREY,

*Attorney for Appellee.*

Be it remembered that on the 12th day of  
639 March, 1909, at a Court of Appeals held at the  
Capitol, in Frankfort, the following order was  
entered:

Commonwealth by &c., vs. Southern Pacific Company,  
Jefferson.

The Court being sufficiently advised this case is  
ordered docketed for the present term, advanced and  
oral argument granted at the April term.

Be it remembered that on the 20th day of April,  
640 1909, at a Court of Appeals held at the Capitol,  
in Frankfort, the following order was entered:

Commonwealth by &c. vs. Southern Pacific Company,  
Jefferson.

It is agreed that the printed record in this case shall  
be substituted for that certified by the Clerk and that  
all matters in the appendix in said printed record shall  
be taken with the same force and effect as if it had pre-  
ceded the certification of the Clerk.

Be it remembered that on the 30th day of  
641 April, 1909, at a Court of Appeals held at the  
Capitol, in Frankfort, the following order was  
entered:

Commonwealth by &c. vs. Southern Pacific Company,  
Jefferson.

This case came on to be heard and was argued by  
Alex P. Humphrey for appellee and M. J. Holt for appel-  
lant, and submitted.

Be it remembered that on the 19th day of June,  
642 1909, at a Court of Appeals held at the Capitol,  
in Frankfort, the following judgment was entered:

COMMONWEALTH BY &C., - - - - - *Appellant,*  
*vs.* APPEAL FROM JEFFERSON CIRCUIT  
 COURT—CHY. 1 DIV.  
 SOUTHERN PACIFIC COMPANY - - - - - *Appellee.*

The Court being sufficiently advised, it seems to them the judgment herein is erroneous.

It is therefore considered that said judgment be reversed and cause remanded for judgment consistent with the opinion herein, which is ordered to be certified to said Court (Judge Lassing not sitting).

It is further considered that appellant recover of appellee its cost herein expended.

And on said date the Court delivered the following opinion:

#### 643 COURT OF APPEALS OF KENTUCKY.

JUNE 19, 1909.

(To be reported.)

COMMONWEALTH OF KENTUCKY - - - - - *Appellant,*  
*vs.* FROM THE JEFFERSON CIRCUIT COURT,  
 CHANCERY BRANCH, FIRST DIVISION.  
 SOUTHERN PACIFIC COMPANY - - - - - *Appellee.*

#### OPINION OF THE COURT BY JUDGE HOBSON.

The Southern Pacific Company was incorporated by an act of the General Assembly of Kentucky approved March 17, 1884. Its principal office is maintained at

Beechmont in Jefferson County, Kentucky, near Louisville. It operates an extensive system of railroads, and also a line of steamships between New York and New Orleans and Galveston. The particulars of these matters are more fully stated in the opinion this day filed in the case of the Southern Pacific Company vs. Commonwealth of Kentucky. This suit was brought by an Auditor's agent in the Jefferson County Court in the name of the Commonwealth against the Company under Section 4241 Ky. St. for the assessment of property omitted from assessment by it for the years 1907 and 1908. The County Court on a hearing of the case dismissed the petition as to everything but the steam ships; but entered a judgment assessing them for taxation. The Company appealed to the Circuit Court, and there a judgment was entered dismissing the petition absolutely. From that judgment the appeal before us 644 is prosecuted.

The ships are enrolled or licensed from the port of New York, and they ply between New York and New Orleans or New York and Galveston. The question to be determined is are these steam ships taxable at the domicile of their owner at Beechmont in Jefferson County? They are tangible personal property and therefore should have been assessed by the assessor of Jefferson County if they are taxable there. The ships in fact have never been in Kentucky, and under ordinary circumstances can not come to Beechmont. Yet it is the domicile of their owner, and if they are taxable at the domicile of their owner they may be taxed in Jefferson County. In *Hays vs. Pacific Mail Co.*, 17 How 596, the Pacific Mail Company was incorporated by the laws of New York. Its principal place of business was in New York; all of the vessels were registered in New York, the residence of the owner. It was held that these ships although plying in the Pacific, acquired no situs in Cali-

fornia; that their situs was at the home port, the domicile of the owner. In *St. Louis v. Wiggins Ferry Co.*, 11 Wall 423, the boats were owned by an Illinois corporation and plied between a point in Missouri and a point in Illinois. It was held that they acquired no situs in the city of St. Louis; but that their situs was at the domicile of the owner, and that they were taxable in Illinois. In *Morgan vs. Parnham*, 16 Wall 471, the owner of the ship had his domicile in New York, and the vessel was registered at the port of New York, but plied between the ports of New Orleans and Mobile. The court held that the vessel had no situs outside of the domicile of the owner and was assessable at New York, where he resided although in fact it never came there. In

645 *Ayer and Lord Tie Company vs. Kentucky*, 202

U. S. 409, the owner of the boats had its domicile at Chicago. The boats plied in the Ohio and Tennessee Rivers. They could not go to Chicago, and they were enrolled at Paducah as their home port. This Court held that the owner in enrolling them at Paducah as their home port had given them a situs in Kentucky, and that they were therefore taxable in Kentucky. (See *Ayer and Lord Tie Co. vs. Com.*, 117 Ky. 161). But on appeal to the United States Supreme Court the judgment was reversed and it was held that these boats were taxable at the domicile of the owner. The Court reviewed its previous opinions and thus stated the rule which it deduced from them:

“The general rule has long been settled as to vessels plying between the ports of different States, engaged in the coastwise trade, that the domicile of the owner is the situs of a vessel for the purpose of taxation, wholly irrespective of the place of enrollment, subject, however, to the exception that where a vessel engaged in interstate commerce has acquired an actual situs in a State other than the place of the domicile of the owner, it may there

be taxed because within the jurisdiction of the taxing authority."

The case of *Old Dominion Steam Ship Company vs. Virginia*, 198 U. S. 299, illustrates the exception referred to. In that case although the domicile of the owner was in New York, the vessels were navigated wholly within the limits of the State of Virginia, and it was held that these vessels had thus acquired a situs in Virginia.

646 But the vessels in controversy here have no situs in New York or New Orleans. They ply in coastwise trade. They have not been taxed and can not be taxed either in New York, in Louisiana or in Texas; for they acquire no situs in these States simply by landing to put off or take on a cargo or by remaining in port a few days, for this or other temporary purpose. If they are not taxable in Kentucky they are not taxable anywhere. Their owner is a citizen of Kentucky. It derives not only its existence, but all its powers from the laws of Kentucky. The ships carry the American flag and enjoy the protection of the laws of the United States, by reason of the fact that their owner is a citizen of Kentucky. Being thus protected by the United States, and their owner enjoying all the privileges which its citizenship in Kentucky confers, these ships should bear their just proportion of the public-burden of taxation.

We therefore conclude that the County Court properly assessed them for taxation, and that the Circuit Court erred in holding otherwise. We find no other error in the record.

Judgment reversed and cause remanded for a judgment as above indicated.

Judge Lassing not sitting.

HUMPHREY, DAVIE & HUMPHREY,

M. J. HOLT,

*For Appellee.*

JOS. SELLIGMAN,

*For Appellant.*

Be it remembered that on the 15th day of July,  
 647 1909, the appellant filed petition for rehearing in  
 the office of the Clerk of Court of Appeals. Which  
 petition for rehearing is as follows:

To-day give this copy to Judge Humphrey, or if he is  
 648 out of town to a member of the firm.

M. J. HOLT.

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## Court of Appeals of Kentucky.

No. 95.

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COMMONWEALTH OF KENTUCKY,

By, &c., . . . . . *Appellant,*

*VERSUS*

SOUTHERN PACIFIC COMPANY, . . . *Appellee.*

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### PETITION FOR REHEARING BY APPELLANT.

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JOSEPH SELLIGMAN,  
 County Attorney, of Counsel.

M. J. HOLT,  
 Attorney for Appellant.

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(Endorsed.) Filed July 15, 1909. Napier Adams, C. C. A.

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## 650 COURT OF APPEALS OF KENTUCKY.

No. 95-(4).

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COMMONWEALTH OF KENTUCKY, BY ETC., - - *Appellant,*

*vs.* PETITION FOR REHEARING.

SOUTHERN PACIFIC COMPANY, - - - - - *Appellee.*

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## STATEMENT.

The appellant, Commonwealth of Kentucky, respectfully and earnestly petitions this court for a rehearing upon the issue of the taxable situs of appellee's intangible property. The court in its opinion, although the record contains a stipulation that such property is of the value of one hundred and fifty million dollars, after declaring that the taxable situs of the steamships is Kentucky, merely declares, "We find no other error in the record." This gives no authority to appellee for contending they are not taxable and does not close the issue.

The Acts of 1906 attempt to establish a special law of assessment for the Southern Pacific and similar companies not previously on the statute books by amending Section 4081 of the Kentucky Statutes so that it now reads (indicating the amendment by capitals):

(SEC. 4081.) "If the corporation organized under the laws of this State, or of some other State government, be a railroad, telegraph, telephone, express, sleeping, dining, palace or chair car company or a corporation performing any other public service, the lines of which extend beyond the limits of the State, the said board will fix the value of the

capital stock as hereinbefore provided, and that proportion of the value of the capital stock which the length of the lines operated, owned, leased, or controlled *in this State*, bears to the total length of the lines owned, leased or controlled in this State or elsewhere, shall be considered in fixing the value of the corporate franchise of such corporation liable for taxation in this State; and such corporate franchise shall be liable to taxation in each county, incorporated city, town or district through or into which such lines pass, or are operated, in the same proportion that the length of the line in such county, city, town or district bears to the whole length of lines in this State; BUT IF ANY SUCH RAILROAD OR OTHER CORPORATION ORGANIZED UNDER THE LAWS OF THIS STATE HAVE ALL OF ITS LINES *OUTSIDE OF THIS STATE*, THE SAID BOARD SHALL FIX THE VALUE OF ITS ENTIRE CAPITAL STOCK AS *HEREINBEFORE* PROVIDED, AND APPORTION TO THIS STATE FOR TAXATION THEREIN THE PROPER PROPORTION AND NOT LESS THAN ONE PER CENT OF ITS SAID CAPITAL STOCK, AND THE AMOUNT SO APPORTIONED SHALL BE THE *VALUE* OF ITS *INTANGIBLE* PROPERTY, INCLUDING ITS CORPORATE FRANCHISE, STOCKS, BONDS, SECURITIES AND CHOSSES IN ACTION, *SUBJECT TO TAXATION IN THIS STATE* AND IN THE COUNTY, CITY, TOWN AND DISTRICT WHERE ITS PRINCIPAL PLACE OF BUSINESS IN THIS STATE MAY BE LOCATED."

(DOMICILE.) The Southern Pacific Company is a Kentucky corporation, incorporated in 1884, with its principal office and place of business in Beechmont, Jefferson County, Kentucky, Section 8 of its Articles (367) providing:

652 (8) "The company SHALL KEEP an OFFICE for the TRANSACTION of BUSINESS, and the clerk or assistant clerk of said corporation shall reside within the State of Kentucky, but the said corporation may keep offices at such places outside of the State as in the judgment of its board of directors its business may from time to time require."

It declares by affidavit in its reports or schedules, filed under the taxing laws of other States, for the purpose of evading in those States the assessment of any portion of its intangible property, that its principal office and place of business is Beechmont, Jefferson County, Kentucky. (Record, pp. 87-92.)

It came to this State, took out its naturalization papers, and became a citizen to procure some special privileges, or to be granted some immunity or exemption not otherwise procurable.

When it voluntarily became the State's citizen, having no idea at any time of owning or operating a railroad in this State (Charter, Sec. 1, p. 365, Record), it irrevocably fixed the taxable situs of its intangible property, its ocean-going steamships which could have no actual situs in any State, and such of its tangible property (if any) as was not in use and permanently located in another State. (See *Union Refrigerator Transit Company vs. Kentucky*, 199 U. S., 4 B. M. 443; *Bank of United States vs. Huth*; *Buck vs. Beach*, 206 U. S.)

If dissatisfied with the incident effects of its voluntarily-adopted patronage, its remedy is to march (like Cox's army) to Frankfort and appeal to the Legislature, or else seek another sovereignty. It might adopt as its mother that buxom, full-breasted mother of tramp corporations, the State of New Jersey, where, with other tax-dodgers, it may rest in peace and live happily  
653 ever after.

(THE SOUTHERN PACIFIC COMPANY'S BUSINESS.) Its charter, granted in 1884 (p. 364 of the Record), gave it the privilege to do anything, except to operate a lottery and a bank (Sec. 8) and "own or operate any railroad within the State of Kentucky." The charter was amended on March 21, 1888, so that the clause of limitation, reading, "that said corporation shall not have power to make joint stock with, lease, own, or operate any railroad within the State of Kentucky," was amended to read, "except subject to and in conformity with the provisions of the laws of the State of Kentucky applicable to railroads and acquiring no special rights that may be possessed by any railroads in the State, except the general and ordinary rights of common carriers as possessed by railroads generally."

The Southern Pacific Company has never owned, operated, nor controlled any railroad or railroad property in this State. It has always remained as originally incorporated, "a tramp corporation," organized in a State and operating under a charter which expressly denied to it the power to own or operate a railroad in the State.

It necessarily follows, that so far as this State is concerned the Southern Pacific Company is not a public utility corporation, but a MERE HOLDING COMPANY.

The reports made to this State show these facts (Record p. 339-351), and also that its business is as expressly declared by the Company (p. 92), "of unifying in management of lines of railroad extending from New Orleans, La., to San Francisco, Cal., to Portland, Ore., and Ogden, Utah." Again in its reports for the 654 years 1907 and 1908 (pp. 340-352) to the State

Board it declares that the business of the Company is "the operating of associated lines."

The deposition of Mr. Mahl, comptroller of the Company, upon this issue (Record, p. 457), is as follows:

"60. Q. Each of these roads are controlled by a Board of Directors independently, or different from the Board of Directors of the Southern Pacific Co., are they not?

"A. That is a matter of record.

"61. Q. And each of said companies is a different corporation from that of the Southern Pacific Co., is it not?

"A. It is.

"62. Q. Each of the lines of railroad operated by the Southern Pacific Co. under lease also have a separate Board of Directors from that of the Southern Pacific Co., do they not?

"A. They have.

"63. Q. Then each of the leased lines of railroad is a separate and distinct corporation from the Southern Pacific Co., is it not?

"A. It is.

"64. Q. Does the Southern Pacific Co. own any line of railroad independent of any other company?

"A. Not that I know of.

"1. Q. (p. 476) Mr. Mahl, in the lines operated under their own organizations, and which are embraced in what you term the 'Transportation line,' and in which the Southern Pacific Co. owns a controlling interest in said roads, I will ask you to now state whether or not the Southern Pacific Co. purchased a majority of said stock at one time or at different intervals of time?

"A. With the exception of possibly some very small amounts, it was acquired all at one time, by exchange for its own stock." (Note) Similar in nature to the Louisville Traction Company which owns and acquired at one time all the stock of the

655 Louisville Railway Company (and which this court has said is a holding company).

The "unified" or "associated lines" of this holding company are divided into three classes. (Record p. 457, questions 60 to 64; p. 476, question 1; exhibit 3, p. 482; p. 357, 358.)

First.—Companies whose capital stock is principally owned by the Southern Pacific Company:

	Miles, Main Track.
Southern Pacific Railroad (1,600,000 shares)	3,332.26
Central Pacific Railway (67,755 shares)	1,452.07
Oregon & California Railroad (———shares)	665.04
Morgan, Louisiana & Texas R. R. (150,000 shrs.)	338.74
Iberia & Vermillion, owned by M. L. & T. R. R.	15.64
Louisiana Western R. R. (33,600 shares)	197.27
Texas & New Orleans R. R. (49,996 shares)	441.34
Galveston & San Ant. R. R. (270,556 shares)	1,316.73
Houston, East & West Texas R. R. (19,162 shrs.)	190.94
Houston & Sheveport R. R. (3,976 shares)	39.78
Houston & Texas Central R. R. (99,983 shares)	694.78
Nevada & California R. R. (4,570 shares)	314.88
SOUTHERN PACIFIC COMPANY	9.41

Total Miles,	9,108.64
It leases:	
New Mexico & Arionza R. R.	88.10
Sonora R. R.	262.60
Total leased,	350.70

Total mileage of system main track 9,459.34 miles, of which it actually owns but 9.41 miles. Controls by stock ownership 9,099.23 and leases 350.70 miles—yet it is contended that this system is not a holding company.

(PROPERTY INVOLVED AND ITS VALUE.) By stipulation found on pages 206, 207, and 208 of the Record.

656 “It is agreed between counsel for plaintiff and defendant that the fair cash value of the intangible property of the defendant, the Southern Pacific Company, consisting of stocks, bonds, choses in action, and cash, as of June 30, 1906, and September 1, 1906, and June 30, 1907, and September 1, 1907, whether said assessment should have been made by the County Assessing Officers of Jefferson County as of

September 1st, of each of these years or by the State Board of Valuation and Assessment as of June 30th of each of these years, was the difference between the tangible property of the defendant company and the average market value of its total capital stock, preferred and common; that the total capital stock of said company as of June 30, 1906, and September 1, 1906, was \$39,569,700.00 of preferred and \$197,849,258.00 of common; that the average market value for the year ending on each of these dates was \$119.62 per share of preferred, and \$66.93 per share of common; that the total capital stock as of June 30, 1907, and September 1, 1907, was \$39,569,700.00 of preferred and \$197,849,258.64 of common; that the average market value of preferred was \$114.81 per share, and of the common \$80.37 per share, for the year ending on each of these dates, that the total tangible property to be deducted from \$179,753,783.85, the average market value of the capital stock as of June 31, 1906, and September 1, 1906, amounts to \$35,194,524.08 and leaves the fair cash value of the intangible property for the year ending June 30, 1906, and September 1, 1906, \$144,559,259.77; that the total tangible property to be deducted from \$205,041,421.75 as of June 30, 1907, and September 1, 1907, amounts to \$47,283,002.62, and leaves the fair cash value of the intangible property for the year ending June 30, 1907, and September 1, 1907, \$157,758,419.13.

“In the amount of tangible property deducted in each instance is the value of the vessels belonging to the Southern Pacific Company, and the names of each and their value are set forth in the deposition of William Mahl filed herein. This deposition shows such values as of June 30, 1906, and June 30, 1907, but it is stipulated that the value was substantially the same as of September 1, 1906, and September 1, 1907.”

This stipulation fixes the value of the intangible property and steamships of the company for the tax years as follows:

1907	Steamships	\$5,111,572.00
1907	Stocks and Bonds	144,559,259.77
1908	Steamships	8,115,643.00
1908	Stocks and Bonds	157,758,419.13

This is the property which it is alleged should have been assessed under Sec. 4241 of the Kentucky Statutes as omitted from assessment.

The agreed valuation for the year 1907, after deducting \$233,500.00 for tugs and barges in New York and Galveston harbors, which remained in harbor:

Intangible property, stocks, bonds, and	
choses in action	\$144,559,259.77
Steamships	4,878,072.00
<hr/>	
Total for the year 1907	\$149,437,331.77

The agreed valuation for the year 1908, after deducting \$391,454.00 for tugs and barges in New York and Galveston harbors:

Intangible property, stocks, bonds, and	
choses in action	\$157,758,419.13
Steamships	7,724,189.00
<hr/>	
Total for the year 1908	\$165,482,608.13

The following tugs, barges, and unfinished ships are not included in the above estimate:

	Barge El Toro, 1907-1908...	\$500—p. 434
658	Tug El Amigo, 1907-1908...	25,000—p. 429
	Tug Confidence and 28 barges,	
	1907-1908 .....	208,000—p. 433-434

Deduct from 1907 assessment. \$233,500

Tug El Chico (bought March, 1907) .	47,500—p. 434
Tug El Toro (bought March, 1907) .	66,000—p. 434
Barge Cyclops (bought June, 1907) .	26,000—p. 435
Barge Penates (bought May, 1907) .	8,974—p. 435
Barge Minerva (bought April, 1907) .	9,480—p. 435

Deduct from 1908 assessment . \$391,454

Momus 80% completed and paid	
Sept. 1, 1906 . . . . .	\$832,000—p. 431
Antilles 65% completed and paid	
Sept. 1, 1906 . . . . .	678,950—p. 431

Report of June 30, 1906, to Auditor (p. 339 Record), shows:

Par value of stock	\$388,460,390 00
Face value of bonds	18,634,000.00
Total	\$407,094,390.00

The report of June 30, 1907, to Auditor (p. 359), shows:

Par value of stock	\$369,854,000.00
Face value of bonds	39,376,300.00
Total	409,230,300.00

Other intangible property was set out in these reports besides the stocks and bonds, yet the only assessment of property made against the Company was:

(TOTAL ASSESSMENT.) The assessment of the Company for the year 1907:

By the State Board, franchise, etc., \$2,374,189.-  
659 00 (which was one per cent of the PAR value of the stock preferred and common issued by the Company. Why assess at 1 per cent of par value?)

The assessment of the Company for the year 1908:

By the State Board, franchise, etc., \$2,374,189.00, which was one per cent of the par value of the stock.

By the County Board of Supervisors, bonds, \$10,000,-000.00, which assessment is in issue on appeal to this court, making the total assessments:

1907	Franchise (State Board)	\$2,374,189.00
1908	Franchise (State Board)	2,374,189.00
	By County Board of Supervisors Bonds	10,000,000.00
1908	Total	\$12,374,189.00

(INTANGIBLE PROPERTY AND STEAMSHIPS, NOT ELSEWHERE ASSESSED.) The Southern Pacific Company, at least so far as this State is concerned, is not a railroad but a HOLDING Company. It exercises in this State no privileges not allowed by law to natural persons. It exercises no franchise "TO DO" and that is the franchise taxed under Sec. 4077 of the Kentucky Statutes. It has from this State its franchise "TO BE." That franchise as said by this court is not property; it is not a subject of taxation (Com. v. Ledman, 32 Ky. L. R. 457).

That franchise however fixes the domicile of the Company. The domicile fixes the taxable situs of its intangible property and its steamships. The company operates a line of steamships from New York to New Orleans, New York to Galveston and New Orleans to Havana.

The stocks, bonds and steamships of the Company are neither listed by it nor taxed by any other jurisdiction for the reason that both the Company and the other States recognize that the taxable situs of this property is in Kentucky.

It is not only disclosed by proof but admitted by stipulation that none of the property sought to be assessed in this proceeding for State and county purposes is elsewhere assessed or taxed.

The stipulation as to non-payment of taxes is found on pages 81 and 82 of the record and in part is as follows:

"First.—The Southern Pacific Company has not made a report to the State Board of Tax Commissioners of the State of New York, nor to any other board or officers of said State charged with the duty of fixing the value of property for the purpose of assessment for taxation for any one or more of the years involved in this litigation; nor has said Southern Pacific Company been assessed, nor has it paid any taxes to the said State of New York for any or all of the years in question in this litigation.

"Second.—That the Southern Pacific Company, as such and in its own name and as a separate and independent corporation has paid no State taxes, *ad valorem* or franchise, to the State of California, for any of the years involved in this litigation, except as shown by the 9th stipulation. \* \* \*

"Fourth.—That the Southern Pacific Company, as such, does not make a report to the State Board of Equalization of California or to any other board or person or officer of said State charged with the duty of assessing property values. Nor is any report required under the laws of California, of said Company, showing where its principal place of business is located, and no such report is made by the Southern Pacific Company in said State. \* \* \*

661 "Sixth.—That the Southern Pacific Company has paid no *ad valorem* nor franchise tax to the State of Oregon for any one of the years involved in this litigation; but that said company is required under the laws of Oregon, like all other foreign corporations doing business in that State to pay a license tax, based upon its capitalization, and that for each of the years involved in this litigation, it has paid to the State \$200 annually and for each year."

Mr. Mahl, the comptroller, in his deposition as to taxes, pp. 458 and 459, says:

"73. Q. Does the Southern Pacific Co. make annual report to the Secretary of the State of New York for assessment of its property, and if so, what does it report as its principal office?"

"A. It does not make any annual report.

"74. Q. Does it report to any board of assessment for the assessment of its property in the State of New York?

"A. It does not."

Again in his deposition on pages 473 and 475, speaking of the steamships,

"146. Q. You may state whether or not the Southern Pacific Company has listed its steamships and barges, set out in the exhibit filed heretofore, with this deposition, for any or all of the years embraced in this litigation, anywhere other than the Commonwealth of Kentucky?

"A. It has not.

"147. Q. Has the Southern Pacific Co. paid taxes on said ships, barges, and tugs anywhere, unless it be in the Commonwealth of Kentucky, for any of the years involved in this litigation?

"A. It has not.

"153. Q. Does the Southern Pacific Company list its boats, ships, and tugs for taxation, and pay the same to either the city or State of New York?

"A. It does not."

Exhibit 19 filed with his deposition, p. 581, is as follows:

#### SOUTHERN PACIFIC COMPANY.

Statement showing amount of taxes paid by the Southern Pacific Co., as an independent corporation to each of the States or territories named below for the years 1901, 1902, 1903, 1904, 1905, 1906, and 1907.

	Louisiana.	Texas.	New Mex.	Ariz.
Year 1901 .....	None	None	None	None
Year 1902 .....	"	"	"	"
Year 1903 .....	\$35.00	"	"	"
Year 1904 .....	"	"	"	"
Year 1905 .....	"	"	"	"
Year 1906 .....	2,825.95	"	"	"
Year 1907 .....	198.75	"	"	"
Total .....	\$3,059.70	None	None	None

	California.	Oregon.	Nevada.	Utah.
Year 1901 .....	\$27,508.52	None	None	None
Year 1902 .....	26,726.23	"	"	"
Year 1903 .....	20,312.51	"	"	"
Year 1904 .....	26,253.37	"	"	"
Year 1905 .....	45,221.70	"	"	"
Year 1906 .....	24,833.23	"	"	"
Year 1907 .....	94,180.97	"	"	"
Total .....	\$265,036.53	None	None	None

This record discloses the appellee to be an habitual tax-dodger, as does the case of *California v. Pacific Railroad Company*, 127 U. S. 27, which involves the following assessments:

THE CENTRAL PACIFIC R. R. CO.

663	Tax Year.	Valuation.	Tax.
	1883	\$18,000,000.00	\$276,865.00
	1884	24,000,000.00	(not given)

SOUTHERN PACIFIC R. R. CO.

1883	(not given)	(not given)
------	-------------	-------------

The Southern Pacific Company now owns, as a holding Company, the capital stock of each of these roads and controls their policies.

The date of the assessment involved is significant in that appellee was organized under its Kentucky charter in 1884, and took over for operation these roads, by an assignment of their capital stock on March 1, 1885.

The record presents the following questions for determination:

FIRST.

Does the fact that appellee operates a line of steamships, controls by stock ownership the policy of 9,459 miles of railroad and gives as a common carrier a bill of lading from New York to San Francisco so modify the general tax law as to give to its intangible and steamship property a taxation situs different from that it would have as the property of a natural person, i. e. at the residence of the owner?

664

SECOND.

Do its franchises "to do" granted by other States and exercised wholly in other States exempt it from taxation as a natural person or place it among that class of persons assessed for a franchise tax by the State Board of Valuation and Assessment?

THIRD.

Can the State Board of Valuation and Assessment constitutionally assess appellee's property under Sec. 5, Art. IV, Chapter 22, of the Acts of 1906 (p. 130)?

FOURTH.

Assuming that the State Board has constitutional jurisdiction to assess, is the action of that board (where it makes an assessment in utter disregard of the statute as to the manner of assessment and utterly disregards the provision of the Constitution that all property shall be assessed at its fair cash value) conclusive upon appellants?

## 665 POINTS OF LAW.—AUTHORITIES.

## I.

“A corporation has no legal existence beyond the jurisdiction of the State creating it—the privilege of transacting business in another State existing by comity alone.”

Appellee is estopped from denying that its principal place of business is other than its place of incorporation.

Purdy's Beach Private Corporations, Secs. 132-675.

8 Wall. 168, Paul vs. Virginia (13 Peters, 519).

34 N. Y. 208, Merrick vs. Van Stantvoord.

147 Mass. 224, Saltmarsh vs. Spalding.

204 Ill. 228, Lincoln Park vs. Swatch.

## II.

The taxable situs of intangible property is at the domicile of its owner.

Constitution, Secs. 174-172; Stat., Sec. 4020.

4 B. M. 443, Bank of U. S. vs. Huth.

199 U. S. 194, Union Ref. Tr. Co. vs. Com.

206 U. S. 392, 401, 409, Buck vs. Beach.

100 U. S. 498, Kirtland vs. Hotchkiss.

169 U. S. 427, 431, Savings Society vs. Multnomah Co.

188 U. S. 204, Blackstone vs. Miller.

116 U. S. 524, Coe vs. Errol.

31 Ky. L. R. 657, 658, Com. vs. Dun.

141 U. S. 22, 27, Pullman Co. vs. Penn.

166 U. S. 224, 225, Adams Express Co. vs. Ohio.

111 Ky. 677, Board of Councilmen of Frankfort vs. Fid. Trust Co.

25 K. L. R. 199, Aetna Life Insurance Co. vs. Coulter.

122 Pa. 386, Penn. vs. Am. Dredging Co.

659

- 666 22 Ky. L. R. 503, Board of Councilmen vs. Stone.  
 32 Ky. L. R. 796, Commonwealth vs. North-  
 western Mutual Life.  
 90 Ky. 68, Whitaker vs. Brooks.  
 4 Bush, 136, Thomas vs. Mason Co.  
 186 Pa. St. 235, Commonwealth vs. Lehigh Val-  
 ley Co.  
 198 U. S., Del. Lac. & W. R. R. Co. vs. Com. of  
 Penn.

### III.

The situs of railway bonds is always at the domicile of the owner. They can not obtain a business situs distinct from that of the owner.

- 111 Ky. 677, Board, etc. vs. Fidelity Trust Co.

### IV.

The taxable situs of ocean going steamships plying between New York and New Orleans, New York and Galveston and New Orleans and Havana is at the domicile of their owner, and not at the port of enrollment, registration or license.

- 202 U. S. 409, Ayer & Lord Tie Co. vs. Com.  
 (reversing 25 Ky. L. R. 1068).  
 56 Am. Dec. 526. Reviewing numerous cases.  
 17 Howard, 596, Hays vs. Pacific Mail Co.  
 16 Wallace, 471, Morgan vs. Parham.  
 198 U. S. 299, Old Dominion Steamship Co. vs.  
 Virginia.

The record shows these steamships worth \$8,000,-000.00 have never been assessed for taxation in any jurisdiction. A vessel which may by law be assessed  
 667 in different districts when assessed in one is exclusive of others.

- Cooley on Taxation, 3rd Ed. p. 653.  
 108 Ill. 609, Halstead vs. Adams.

## V.

The appellee is not liable to a franchise tax. Its franchise "to be" is not property. Its franchises "to do" are exercised wholly in other States and are granted by other sovereigns. Such a tax is payable to the State, county and taxing district "where its franchise may be exercised" and if it operates no railroad in this State it can not be assessed for a franchise tax for doing business as a railroad.

106 Ky. 168 to 172, Lou. Tobacco Warehouse Co. vs. Com.

32 Ky. L. R. 457, Com. vs. Ledman.

127 U. S. 40, California vs. Pac. R'y Co.

166 U. S. 180, 154, 224, Adams Express Co. vs. Ohio.

22 Ky. L. R. 503, Board, etc. vs. Stone.

30 Ky. L. R. 723, Com. vs. Cumberland Tel. Co. Ky. Stat. Secs. 4077 to 4083.

198 U. S. 353, Delaware, L. & W. R. R. Co. vs. Penn.

## VI.

Such a tax can not be assessed by the State Board on the mileage basis because the appellee has no mileage in Kentucky; nor on the earnings basis because it earns nothing in Kentucky and this State can not tax the earnings made in other States; nor by deducting the tangible property from "the capital stock." There is no tangible property, the capital stock is worth \$400,000,000.00.)

The appellee states the Board assessed it by taking one per cent of the PAR VALUE of the capital stock. Such a manner of assessment is unauthorized, is not tenable nor one of the three rules fixed by the statute to arrive at the proper proportion.

- Ky. Stat. Secs. 4077 to 4083.  
 122 U. S. 338, 340, 342, Phila. Steamship Co. vs.  
 Penn.  
 127 U. S. 29, California vs. Pacific Railroad Co.  
 193 U. S. 499, Fargo vs. Hart.

## VII.

If a holding company the board has no jurisdictional right to assess, because such companies are not liable to a franchise tax. If a railroad company the assessment is *pro tanto* illegal and void, because the said act releases or exempts from assessment property, tangible and intangible, having a taxable situs in this State.

- 32 Ky. L. R. 457, Com. vs. Ledman.  
 127 U. S. 29, California vs. Pacific Railroad Co.  
 25 Ky. L. R. 201, Fid. & Cas. vs. Coulter.  
 113 So. Western, 469, 478, James, Auditor, vs.  
 Kentucky Refining Co.

## VIII.

All the business of appellee being done beyond this State, it is not liable to a franchise tax. This State can only impose an *ad valorem* tax on appellee as a citizen thereof.

- 109 Ga. 91, Atlanta Nat. Asso. vs. Stewart.

669 All property must be assessed "at its fair cash value estimated at the price it would bring at a fair voluntary sale."

- 80 Miss. 149, Revenue Agent vs. Clarke.  
 20 Ky. L. R. 1295, Paducah, etc. vs. McCracken  
 Co.  
 176 U. S. 557, 558, Weyerhauser vs. Minnesota.

## IX.

While the Legislature may authorize different modes of assessment, the rule of assessment of all property must be the same. Sec. 5, Art. IV, Chap. 22 of the Acts of 1906, p. 130 is in conflict with Sec. 172 of the Constitution because it in effect exempts defendant's intangible property from assessment. It is in contravention of Sec. 171 because it establishes a different rule of assessment which in effect exempts appellee's property. It is contrary to Sec. 174 of the Constitution because appellee's property is not taxed in proportion to its value, and at the same rate paid by individual property.

It is contrary to Subsection 15 of Sec. 59, because same is a special law relating to taxation.

- 38 Southwestern II, Commonwealth vs. Taylor.
- 20 Ky. L. R. 1188, South Covington, etc. vs. Bellevue.
- 32 Ky. L. R. 457, Commonwealth vs. Ledman.
- 109 Ga. 91, Atlanta Nat. Assn. vs. Stewart.
- 97 Ky. 399, etc., Levy vs. Louisville.
- 25 Ky. L. R. 199, Aetna Life Ins. Co. vs. Coulter.
- 22 Ky. L. R. 503, Board of Councilmen of Frankfort vs. Stone.

## X.

It is an assessment of franchises derived from other sovereignties, or exercised exclusively in other States; or a tax on the gross receipts of steamships and railroads derived from the transportation of property by sea and between different States and foreign countries and is therefore unconstitutional and void.

- 198 U. S. 353, 356, Del. L. & W. R. R. Co. vs. Penn.
- 166 U. S. 224, 225, Adams Express Co. vs. Ohio.

- 122 U. S. 338, 340, 342, 344, Phila. Steamship Co.  
vs. Penn.  
127 U. S. 29, 33, 34, 40, 41, California vs. Pacific  
R. R. Co.  
193 U. S. 499, Fargo vs. Hart.  
127 U. S. 640, Leloup vs. Mobile.

## XI.

It is unconstitutional because it discriminates and exempts appellee from an *ad valorem* tax as a citizen, when that is the only tax that can constitutionally be levied.

- 98 Ky. 299, Southern Building & Loan Assn. vs.  
Norman.

## XII.

If an officer or board omits to assess property or grossly undervalues it he violates his duty. "A gross under-valuation is within the principle applicable to an entire omission of property."

To render an assessment conclusive,

- 671 First. It must be made in the manner required  
by law.  
Second. There must be no gross under-valuation.  
Third. There must be no such violations of law  
to obtain the result, as constitute a jurisdic-  
tional error.  
Fourth. If reports are submitted they can not  
be utterly disregarded.  
24 Ky. L. R. 210, Southern Railway vs. Coulter.  
103 Wis. 465, State vs. Lawler.  
115 Wis. 63, State vs. Losby.  
34 Ky. L. R. 811, Coulter vs. Louisville Bridge  
Co.  
176 U. S. 557, 558, Weyerhauser vs. Minnesota.

An examination of appellee's answer discloses but three defenses:

1st. A plea of practical construction.

2nd. That if its intangible property is taxed "otherwise than it has been assessed" it would be in violation of the Fourteenth Amendment of the Constitution of the United States and a regulation of inter-state commerce.

3rd. The same defense is made against a taxation of its tangible property.

1st. As to the issue of "practical construction," The court has presented for construction A NEW ACT which has received neither practical nor judicial construction. About 12 years ago Auditor Stone notified appellee that it must show cause why it should not be assessed for a franchise tax as a public utility corporation for the years 1892 to 1896 inclusive. Over the very strenuous objection of Judge Humphrey, appellee's counsel, raising the same constitutional questions herein raised as shown by his many letters which are a part of this record, the Southern Pacific Company was assessed for a franchise. The assessment was arbitrary, without considering the intangible property, and at a comparatively insignificant sum (\$1,000,000.00). The controversy was dropped by appellee and the tax paid. The only change made by defendant was to move its office from Louisville to Beechmont to escape city taxes. It was assessed at \$1,000,000.00 each year from 1892 to 1896 by a tentative agreement although appellee's holdings of stocks and bonds increased from \$8,000,000.00 to exceeding \$200,000,000.00 during that period.

673 In 1903 the appellee was sued for back taxes upon its tangible property by Weller, auditor's agent, and the case was settled by the entry of

an agreed judgment of a \$300,000.00 additional assessment of "tangible property." (This was before the decision in the Union Refrigerator Transit Company case.) In 1905 Bizot, auditor's agent, brought suit seeking an assessment of appellee's property, tangible and intangible. In that case the defense was made that it was liable for a franchise tax and could not be assessed by any officer or board other than the State Board of Valuation and Assessment. Thus reversing its position, pleading the assessment of that board in bar of a local assessment—in other words taking the bull by the other horn. This case was settled and an agreed judgment entered, the defendant paying \$50,000.00 back taxes rather than submit to a judicial construction. Again for the year 1906 Mr. Alexander, a revenue agent, instituted an action against appellee to have its intangible property listed for assessment at its domicile. The appellee again settled out of court by the payment of \$28,000.00 back taxes. Never wanting nor procuring a construction, judicial or otherwise of an issue which should have been settled by the courts. Always willing to buy its peace, before a construction could be obtained. These facts are matters of record in this court. Thus we see there is nothing in the plea of practical construction.

Appellee's second contention, that it would be in violation of the Fourteenth Amendment and of a regulation of inter-state commerce were it "otherwise assessed" is without merit.

If assessed under the general tax law as a  
 674 citizen of this State upon its steamship and intangible property, there is no violation of any constitutional provision and no infringement of any regulation of inter-state commerce. If assessed by the State Board under the Act of 1906 both objections are valid and sufficient but appellee will never raise them as long as the assessment is one per cent of the fair cash value of its property. Were this property assessed at

its fair cash value, the appellee would, with the greatest vigor, and most strenuous protest, assail Section 5 of the Acts of 1906; disregard the fact that its counsel is the father of this abortive birth prepared specially to fit the case; and successfully assail its constitutionality. Therefore, counsel for appellee uses the phrase "otherwise than as it has been assessed." If the Act is constitutional upon a one per cent assessment it is constitutional upon an 80 per cent valuation.

As to the third defense. Appellant confesses this State has no jurisdictional right to assess any tangible property permanently located in another State. It makes no effort to have assessed any tangible property except appellee's steamships. They are ocean-going vessels, they are treated in law as intangible property, following the domicile of the owner, since they have no permanent situs and since it is incidental for them to be in port.

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It is a well established rule, at least in this State, based upon our Constitution, Sec. 172, the Kentucky Statutes, Sec. 4020, and judicial construction of those sections that intangible property of CITIZENS OF THIS STATE IS SUBJECT TO TAXATION BY THIS STATE and shall be taxed at its fair cash value.

This law has no exception in favor of a citizen 675 of this State unless the intangible property consists of stock in a domestic corporation and the exception this court makes in the Walsh case.

This construction and these sections violate no provision of the Federal Constitution when they fix without qualification the situs of such property.

It is contended, however, by appellee that its intangible property has a taxable situs elsewhere because it is in use elsewhere. It is true as to tangible property that the Supreme Court of the United States has said that it can

not be taxed by this State if permanently located in, and in use in another State, (Union Refrigerator Transit Co. case 199 U. S.), but no court has ever said that this or any other State can not tax the intangible property of its citizen.

This case however as to the situs of intangible property is contrary to appellee's contention. Therein it is said:

"The arguments in favor of the taxation of intangible property at the domicile of the owner have no application to tangible property. \* \* \* This rule (*mobilia sequuntur personam*) is, doubtless, true as to intangible property such as bonds, mortgages, and other evidences of debt. But the better opinion seems to be that it does not hold in the case of visible tangible personal property permanently located in another State."

This issue was long since settled in this State. As early as 1844 the Court of Appeals, 4 B. M. 443, decided:

676 "In the general, personal property or debts owing have been adjudged to have no locality, but follow the person of the owner or creditor, and are assignable, transferable, or transmissible by his voluntary act, according to the laws of the country of his domicile. And this, as a general rule, is regarded by all civilized nations, and it is highly proper that it should be, otherwise the owner or creditor, being ignorant of the laws of the country of their situs, or of the residence of the debtor, might be deluded and deceived in honest efforts to dispose of them, and innocent purchasers or assignees in their honest effort to acquire them. \* \* \* The peace and harmony among States and nations, and the mutual protection, security, and safety of the rights of the citizens of each, demand that this great law of nations should not upon slight grounds be impaired or disregarded."

This rule as to situs has with uniformity been followed by the courts of Kentucky, and embodied in its Constitution and statutes.

It is true intangible property in use in another State as money loaned and reloaned, may be taxed by that State although the owner may reside elsewhere (*Buck vs. Beach*, 206 U. S., *Commonwealth vs. R. G. Dun & Co.*, 31 Ky. L. R. 561), but there is no decision that the State can not tax its own citizen on his intangible property, even though the loans are in other States or the investment is secured by property in another State. Even stock in a foreign land company is taxed at the domicile of the owner although all the property that the company owns is the land and that is taxed by the foreign State.

It is said in the case of *Kirtland vs. Hotchkiss*, 100 U. S. 498:

“Plainly, therefore, our only duty is to inquire whether the Constitution prohibits a State from taxing, in the hands of one of its resident citizens, a  
677 debt held by him upon a resident of another State, and evidenced by the bond of the debtor, secured by deed of trust or mortgage upon real estate situated in the State in which the debt resides. The question does not seem to us to be very difficult of solution. The creditor, it is conceded, is a permanent resident within the jurisdiction of the State imposing the tax. The debt is property in his hands constituting a portion of his wealth, from which he is under the highest obligation, in common with his fellow-citizens of the same State to contribute for the support of the government whose protection he enjoys. That debt although a species of intangible property, may, for purposes of taxation, if not for all others, be regarded as situated at the domicile of the creditor. It is none the less property because its amount and maturity are set forth in a bond. That bond, wherever actually held or deposited, is only evidence of the debt, and if destroyed, the debt—the right to demand payment of the money loaned, with the stipulated interest—remains. Nor is the

debt, for the purpose of taxation, affected by the fact that it is secured by mortgage upon real estate situated in Illinois. The mortgage is but a security for the debt, and as held in *State Tax on Foreign-held Bonds (supra)* the right of the creditor 'to proceed against the property mortgaged, upon a given contingency, to enforce by its sale the payment of his demand, \* \* \* has no locality independent of the party in whom it resides. It may undoubtedly be taxed by the State when held by a resident therein,' etc. *Cooley on Taxation*, 15, 63, 134, 270. The debt, then having its situs at the creditor's residence, both he and it are, for the purposes of taxation, within the jurisdiction of the State. It is, consequently, for the State to determine, consistently with its own fundamental law, whether such property owned by one of its residents shall contribute, by way of taxation, to maintain its government. Its discretion in that regard can not be supervised or controlled by any department of the Federal government, for the reason, too obvious to require argument in its support, that such taxation violates

678 no provision of the Federal Constitution."

The case of *Buck vs. Beach*, 206 U. S. 392, is the last expression of the United States Supreme Court, and is directly in point. Therein it is said (Brief):

"A debt is not a corpus capable of a local position, but purely a *jus incorporale*, and contracts respecting personal property and debts are now universally treated as having no situs or locality, and they follow the person of the owner in point of right, although the remedy on them must be according to the law of the place where they are sought to be enforced. *Story on Conflict of Laws*, Sections 362, 399; *Kirtland vs. Hotchkiss*, 100 U. S. 491." (Opinion.) "Although public securities, consisting of State bonds and bonds of municipal bodies, and circulating notes of banking institutions have sometimes been treated as property in the place where they were found, though removed from the domicile

of the owner, State Tax on Foreign-held Bonds, 15 Wall. 300, 324, it has not been held in this court that simple contract debts, though evidenced by promissory notes, can under the facts herein stated be treated as property and taxed in the State where the notes may be found.

"As is said in the above-cited case at page 320: 'All the property there can be in the nature of things in debts of corporations, belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations from numerous adjudications, but no number of authorities, and no forms of expressions, could add anything to its obvious truth, which is *recognized upon* its simple statement.' " (206 U. S. 407.)

In the same case, page 401, it is said:

679 "Generally speaking, intangible property in the nature of a debt may be regarded, for the purposes of taxation, as situated at the domicile of the creditor and within the jurisdiction of the State where he has his domicile. It is property within that State."

Justice Day, dissenting, says:

"I agree that a debt intangible in form can not acquire a situs for the purpose of taxation, but I submit that when a debt takes the shape of note and mortgage, it may, if the State, in the exercise of its taxing power so wills, acquire a situs separate from the domicile of the owner under the circumstances shown in this case."

In the case of Savings Society vs. Multnomah County, 169 U. S. pages 427-431, it is said:

"The authority of every State to tax all property, real and personal, within its jurisdiction is unques-

tionable. *McCulloch vs. Maryland*, 4 Wheat. 316, 429. Personal property, as this court has declared again and again, may be taxed either at the domicile of its owner or at the place where the property is situated, even if the owner is neither a citizen nor a resident of the State which imposes the tax. *Tarpan vs. Merchants' Bank*, 19 Wall. 490, 499; *State Railroad Tax Cases*, 92 U. S. 575, 607; *Coe vs. Errol*, 116 U. S. 517, 524; *Pullman's Car Co. vs. Pennsylvania*, 141 U. S. 18, 22, 27. The State may tax real estate mortgaged, as it may all other property within its jurisdiction, at its full value. It may do this, either by taxing the whole to the mortgagor or by taxing to the mortgagee the interest therein represented by the mortgage and to the mortgagor the remaining interest in the land. And it may, for the purposes of taxation, either treat the mortgage debt as personal property to be taxed like other choses in action, to the creditor at his domicile, or treat the mortgagee's interest in the land as real estate, to be taxed to him, like other real property, at its situs. (427.) \* \* \*

680 "In *Kirtland vs. Hotchkiss*, 42 Conn. 426 affirmed by this court in 100 U. S. 491, the point adjudged was that debts to persons residing in one State, secured by mortgage of land in another State, might for the purpose of taxation, be regarded as situated at the domicile of the creditor. But the question, whether the mortgage could be *taxed there only*, was not involved in the case, and was not decided either by Supreme Court of Connecticut or by this court." (431.)

The fact that property is taxed in another State, however, does not exempt it from assessment at the owner's domicile. That is not twice taxing a thing. To constitute double taxation it must be twice taxed in the same jurisdiction.

The mere fact that these stocks and bonds of appellee were sometimes kept in New York, sometimes in New Jersey, and sometimes in California (p. 472-473) shows their transient and intangible character, and indicates a cause why they were never assessed by either State.

Even if they had been assessed or were subject to assessment in either State, the taxation by both jurisdictions, or the right to tax by both jurisdictions, violates no provision of the Constitution (State or national), nor is it double taxation. Each jurisdiction is sovereign and independent in this respect, and one sovereign can not exempt property from taxation in another sovereignty.

In *Tennessee vs. Whitworth*, 117 U. S. 129 to 136, the Chief Justice, delivering the opinion of the court, said:

“In corporations four elements of taxable value are sometimes found: (1) franchises; (2) capital stock in the hands of the corporation; (3) corporate property; and (4) shares of the capital stock in the hands of the individual stockholders. Each of these is under some circumstances, an appropriate subject of taxation, and it is, no doubt, within the power of  
681 a State, when not restrained by constitutional limitations, to assess taxes upon them in a way to subject the corporation or the stockholders to double taxation.”

In 206 U. S. (*Buck vs. Beach*), it is said:

“But an attempt to escape proper taxation in Ohio does not confer jurisdiction to tax property asserted to be in Indiana, which really lies outside and beyond the jurisdiction of that State. Jurisdiction of the State of Indiana to tax is not conferred or strengthened by reason of the motive which may have prompted the decedent to send into the State of Indiana these evidences of debts owing him by residents of Ohio.”

In the case of *Blackstone vs. Miller*, 188 U. S. 204, it is said:

“To come closer to the point, no one doubts that succession to a tangible chattel may be taxed wherever the property is found, and none the less that the law of the situs accepts its rules of succession

from the law of domicile, or that by the law of the domicile the chattel is part of a *universitas* and is taken into account again in the succession tax there.

\* \* \* No doubt this power on the part of two States to tax on different, and more or less inconsistent, principles leads to some hardship. It may be regretted also that one and the same State should be seen taxing on the one hand according to the fact of power and on the other hand at the same time according to the fiction that in successions after death *mobilia sequuntur personam* and domicile governs the whole. But these inconsistencies infringe no rule of constitutional law."

In the case of Pullman's Car Co. vs. Pennsylvania, 141 U. S. pages 22-27, it is said:

682 "No general principles of law are better settled, or more fundamental, than that the legislative power of every State extends to all property within its borders, and that only so far as the comity of that State allows can such property be affected by the law of any other State."

"This objection is based upon the general rule of law that personal property, as to its situs, follows the domicile of its owner. It may be doubted very reasonably whether such a rule can be applied to a railroad corporation as between the different localities embraced by its line of road. But, after all, the rule is merely the law of the State which recognizes it, and when it is called into operation as to property located in one State, and owned by a resident of another, it is a rule of comity in the former State, rather than an absolute principle in all cases. Green vs. VanBuskirk, 5 Wall, 312."

To the same effect is the last paragraph of the case of Commonwealth vs. Dun, 31 Kentucky Law Reporter, 657-658, therein it is said:

"The argument that the imposition of this tax may impose double taxation on the owner, and thus result in great injustice, as he may be required to

list his property at the place of his residence, is entitled to some consideration, but it can not be allowed to overthrow or evade the plain provisions of our laws. It is impossible to enact tax laws that will operate equally and justly upon all species of property. The most that can be done is to make them as equitable as practicable, and each State must determine for itself the wisdom and propriety of its own tax law."

Judge Humphrey, on page 156 of his brief, states:

"It is easier, consistent with obvious facts, to apply to intangible property the fiction that personal property follows the owner and is constructively at his domicile than it is to apply such fiction to tangible personal property.

683 "Again, it has never been decided that the mere absence of intangible property from the domicile of the owner will allow of its being taxed where it may be situated. Such absence may be regarded as temporary, and in such a case the fiction would still apply."

I concede that the Supreme Court of the United States has established the right to tax tangible property which has acquired a different situs from that of its owner at the jurisdiction of its situs. After this principle had been established, that court went further and decided that tangible personal property permanently located and in use in a jurisdiction foreign to the domicile of the owner could not be taxed at the owner's domicile.

The Supreme Court of the United States has gone so far as to give intangible property in use in a foreign State, in the same manner that similar property is so used in that State, a taxable situs in that State, but no decision of the Supreme Court of any State or any nation has yet gone so far as to declare that the mere fact that intangible property is taxed in a foreign jurisdiction takes from the jurisdiction of the domicile of the owner the power to tax the same property.

The conclusion to be drawn and the law applicable to the proposition is aptly expressed in the case of *Coe vs. Errol*, 116 U. S. 524, therein it is said:

“If the owner of personal property within a State resides in another State which taxes him for that property as part of his general estate attached to his person, this action of the latter State does not in the least affect the right of the State in which the property is situated to tax it also. It is hardly necessary to cite authorities on a point so elementary. The fact, therefore, that the owners of the logs in question were taxed for their value in Maine as a part of  
684 their general stock in trade, if such fact were proved, could have no influence in the decision of the case, and may be laid out of view.”

I think the foregoing suggestions clearly demonstrate that the assessment of these stocks and bonds is not the taking of property without due process of law in contravention of Section 1 of Article XIV of the Constitution of the United States.

Our own Constitution (Sections 172-174) and statute, Section 4020, regulate or fix the situs of this property for taxation; the taxing power of the State is one of its attributes of sovereignty (18 Wallace, 5), and no question is more clearly a matter of local law than one arising under its tax laws (*Lewis vs. Monson*, 151 U. S. 549).

As aptly expressed in the case of *Kirtland vs. Hotchkiss*, 100 U. S. 498-499:

“It may, therefore, be regarded as the established doctrine of this court that so long as the State, by its laws, prescribing the mode and subjects of taxation, does not entrench upon the legitimate authority of the Union or violate any right recognized or secured by the Constitution of the United States, this court, as between the State and its citizens, can afford him no relief against State taxation, however unjust, oppressive, or onerous. \* \* \*

"It is, consequently, for the State to determine, consistently with its own fundamental law, whether such property owned by one of its residents shall contribute, by way of taxation, to maintain its government. Its discretion in that regard can not be supervised or controlled by any department of the Federal government, for the reason, too obvious to require argument in its support, that such taxation violates no provision of the Federal Constitution."

Appellee contends it is not a holding company,  
685 but a railroad company. The Commonwealth does not seek to tax its roadbed, its rolling stock, its real estate, nor any of the property owned by it necessary to operate a railroad, but the property it owns as a holding company.

Absolutely nothing can be said in defense of taxing appellee's bonds, they in no sense are necessary in the railroad business. The stock of the companies may or may not bring business or help in the operation of a railroad, but never the bonds. Is its dealing in bonds operating a railroad, within the meaning of Sec. 4077?

Intangible property is taxed at the domicile of the owner for many reasons. There it is the easiest to locate and the most difficult to secrete. It is so easy to shift from one jurisdiction to another; you can carry a fortune in a handbag; therefore the law fixes its domicile.

APPELLEE IS NOT A PUBLIC UTILITY  
686 CORPORATION WITHIN THE MEANING OF SECTION 4077 OF THE KENTUCKY STATUTES, SO AS TO SUBJECT IT TO LIABILITY FOR A FRANCHISE TAX OR ASSESSMENT BY THE STATE BOARD OF VALUATION AND ASSESSMENT. IT SHOULD BE ASSESSED UNDER THE GENERAL LAW AS A CITIZEN OF THIS STATE.

## WHY.

Every corporation has two franchises, the right "to be" and the right "to do." A public utility corporation has in addition the right "to do something not allowed by law to natural persons."

The right to be, and the right to do what a natural person can do, is not property and can not be assessed and taxed. Yet such rights establish domicile and fix the situs of property.

The right to do something not allowed by law to natural persons, is the right and the only thing that is taxed under Sec. 4077 of the Kentucky Statutes, although its assessment includes the intangible property of the person assessed, but these FRANCHISES TO DO are exercised wholly in other States and are granted by other sovereigns. The State of Kentucky therefore can not tax them. (Jeffersonville Ferry Case, 188 U. S.) Besides the section expressly provides that this tax is payable to the State, county, and taxing district "where its franchise may be exercised," and as no franchise to do a special privilege is exercised in Kentucky it follows  
687 that this State can not tax the privilege; that the

State Board can not assess the privilege nor the property of defendant, and unless taxed under the general law, appellee's steamships and intangible property escape taxation. In no event can the State Board assess the steamships.

The only jurisdiction that can assess the SPECIAL PRIVILEGE which the law seeks to assess under Section 4077 *et seq.* is the jurisdiction where the franchise is exercised.

Counsel for appellee concede so much when they say (p. 52 brief):

"Is there any doubt that each State through which the Southern Pacific operates its lines could levy a franchise tax like that imposed by Kentucky and include in that tax a fair proportion of all stocks, bonds, and choses in action employed in the general conduct of its business?"

The Southern Pacific Company so far as this State is concerned performs no public service, and the authorities are clear, that this State can not assess for public service performed in other States.

It is true as said by counsel for appellee (p. 57 of brief), if it operated any railroad or performed any public service, or exercised any special privilege in the State, the State Board could assess it as a public service corporation, but since it performs none, it must be taxed by this State as a private citizen on its property, having a taxable situs in Kentucky.

Section 4077 *et seq.* never contemplated the assessment of such a corporation as the Southern Pacific Company. A railroad doing business in this State and out of it is assessed by the board in proportion to the mileage within the State and out of it. A public service corporation earning money in this State and out of it is assessed for franchise purposes in proportion to the earnings in this State and out of it. Again the corporation is capitalized and its tangible property is deducted from the "capital stock" which remainder is the value of its franchise. The appellee can be assessed in neither of these ways for the simple reason that a company, which so far as this State is concerned is a holding company dealing in stocks and bonds and paying a broker's license (Sec. 7 of its charter) was never deemed by the law maker to be a public service corporation assessable under this article nor liable for a franchise tax. Of course the company is liable for a franchise tax if this State can assess it on its franchises exercised in other States but I have too much regard for the decisions

of the United States Supreme Court and the Fourteenth Amendment to suggest such a method.

Section 4096 *et seq.* treats wholly of the assessment of railroads and railroad property. It provides "that the president or chief officer of each railroad company or other corporation owning or operating a railroad line IN WHOLE or IN PART in this State, and all railroad bridge companies owning or operating the bridge spanning a river constituting the boundary of this State shall," etc.; these conditions do not fit appellee and this article (V) is not applicable.

Section 4079 contemplates an assessment of corporations, domestic and foreign, operating lines wholly or in part in this State and the assessment of their franchise by deducting the tangible property from the capital stock. Clearly this section is not applicable to appellee.

Section 4080 contemplates an assessment of the 689 franchise of foreign corporations operating in this State upon an income basis in this State in proportion to the total income and clearly this section is not applicable to appellee.

Prior to the Amendment of 1906 to Section 4081 of the statute, the only corporations assessable under that section were those which operated in this State with lines extending "beyond the limits of the State." The statute reading "the lines of which extend beyond the limits of the State, the said board will fix the value of the capital stock as hereinbefore provided, and that proportion of the value of the capital stock which the length of the LINES OPERATED, OWNED, LEASED OR CONTROLLED IN THIS STATE bears to the TOTAL length of the lines owned, leased or controlled in this State and elsewhere." I submit how could the Southern Pacific be assessed under this section?

I submit that these sections established that the Legislature prior to the Act of 1906 never contemplated the assessment of the Southern Pacific or any similar cor-

poration, under the public utility franchise assessment act (4077 *et seq.*, 4096 *et seq.*). Such a contention is untenable.

Such was the position taken by counsel for appellee at all times until the State Revenue Agents sought the assessment of appellee's property at a figure near its real value. Whereupon being better satisfied with the action of the board than the threatened action of the agents, they shifted their position, acknowledged by conduct that their letters (pages 172-182 of the record) were  
 690 buncombe, and readily adjusted themselves to a death grip of the other horn of the dilemma.

Counsel for appellee contend that the State Board was created to assess intangible property. Intangible property is assessed under the general law, there was no reason for the board's creation for that purpose. The State Board of Valuation and Assessment was created to assess the franchises of public service corporations exercising special privileges in this State. In the assessment of such franchises the value of the intangible property is included but it is only one kind of the property assessed, the other is the special privilege; if no special privilege is granted and EXERCISED in this State, the State Board can not assess.

How can a franchise assessment include an intangible property tax, if the value of the intangible property is many times the value placed upon the franchise?

It clearly does not assess the rights to be and to do, both of which every private corporation has, and each of which this Court has declared are not property for the purposes of taxation.

The following cases, portions of which are quoted, demonstrate the correctness of Appellant's position that the mere "right to be" is not taxable.

In the case of *Commonwealth vs. Ledman*, 32 Ky. L. R. 457, it is said:

“ ‘The right to be’ is not a subject of taxation under either the laws of this State or the laws of New Jersey. The ‘right to be’ is not an item of property at all \* \* \* nor can its ‘right to be’ even become an element of property that is subject to taxation, its right to be can merely authorize or give it the ‘right to do’ and *wherever* the ‘right to do’ is *exercised* or utilized by acquiring property or engaging in business, then that property or that business would be  
 691 subject to taxation and the amount of that taxation would depend altogether upon the value of the property acquired or the amount of business done.”

In the case of *James, Auditor vs. Kentucky Refining Company*, 113 Southwestern, pages 469 and 470, it is said:

“The franchise spoken of by this statute is not the right to do the thing, *but the doing of it*. The State does not seek by this section to tax the right to do it. It fixes a value upon the privilege which has been enjoyed, and taxes that value as property of the person who has exercised the privilege. The right to be a corporation is one thing; the fact that the corporation actually engages in a certain business, or enjoys a privilege peculiar to such business, is or may be quite a different thing. The legislative purpose was to classify certain kinds of employment, which upon an examination of the statute will be seen to have been all of a kindred nature—it was the serving of the public in some sense. \* \* \*

“It will be observed it is never taxed unless property otherwise taxable is employed in the designated occupations; nor is it ever taxed independently of, or without reference to, the tangible property to which it is by this statute annexed. \* \* \*

“The business of carrying freight or passengers upon railroads was deemed to impart a peculiar and special value to all the physical property so employed. Therefore the special value so added was to be assessed and taxed.”

As to the "right to do," it is said in the case of *The Louisville Tobacco Warehouse Company v. Commonwealth*, 106 Ky. 168, 169, 170:

692 "The corporate property sought by this statute to be subjected to taxation may be said to be the added value which the *exercise* by the corporation of any special or exclusive privilege or franchise not allowed by law to natural persons gives to the tangible property. For example, a railroad track, without the right of operating a railroad, would be of small value; with that right it might be worth millions of dollars. \* \* \* It is conceded that a trading corporation has a franchise; but its franchise is merely a franchise to exist, to have a name, to contract and be contracted with, to sue and be sued, in the same manner as a natural person, and this franchise is not a 'special or exclusive privilege or franchise not allowed by law to natural persons.' Nor can the appellant corporation be said to have any intangible property subject to taxation under this statute. Its tangible property—its warehouse, drays, and personal property—is of no greater value in the hands of the corporation than it would bear if owned and managed by the natural persons who are its stockholders. This is also true of its choses in action, etc. The value of its capital stock must necessarily be the value of its intangible property, choses in action, etc. It had no *intangible* property subject to taxation under the statute, and, as matter of law, could have none."

In the case of *Adams Express Company v. Ohio*, 166 U. S. 224 and 225, it is said:

"Franchises *to do* go wherever the work is done. The Southern Pacific Railway Company is a corporation chartered by the State of Kentucky, yet within the limits of that State it is said to have no tangible property and no office for the transaction of business. The vast amount of tangible property which by lease or otherwise it holds and operates,

*and all the franchises to do which it exercises, exist and are exercised in the States and territories on the Pacific slope. Do not these intangible properties—these franchises to do—exercised in connection with the tangible property which it holds, create a substantive matter of taxation to be asserted by every State in which that tangible property is found?"*

The Kentucky Statutes, Secs. 4078, 4079, 4080, 693 and 4081, re-enacted in the Acts of 1906, fix the manner by which the franchise tax is arrived at. The Court of Appeals has repeatedly declared that these are the only methods. Such a tax cannot be assessed against the appellee on the mileage basis because the defendant has no track nor transportation lines in Kentucky; nor on the earnings basis because it earns nothing in Kentucky and this State cannot tax the earnings made in other States; nor by deducting the tangible property from the capital stock. First, Because no tangible property has been assessed. There is none but the steamships and office furniture and the capital stock is worth \$400,000,000.

The term "CAPITAL STOCK" as used in the amendment to Sec. 4081 of the Kentucky Statutes (Acts of 1906, p. 130), wherein it is provided:

*"but if any such railroad or other corporation organized under the laws of this State have all its lines outside of this State the said board shall fix the value of its entire capital stock as hereinbefore provided, and apportion to this State for taxation therein the proper proportion and not less than one per cent of its said capital stock and the amount so apportioned shall be the value of its intangible property including its corporate franchise, stocks, bonds, securities, and choses in action in this State, etc.,"*

is construed and defined by the Court of Appeals in the case of Henderson Bridge Co. v. Commonwealth, 99 Ky. 641, wherein it is said:

“In the light of the foregoing provisions of the Constitution and of the act of the Legislature and of the instructions given to the Board of Valuation and Assessment and of the sworn statement demanded  
 694 of the president of the company on which with other testimony to make this valuation we are constrained to say that by this *term capital stock* the Legislature meant to include the entire property, real and tangible and intangible, all assets on hand and its franchise as well and that when so embraced and construed and valued as an entirety, then to take off the tangible property already assessed, and that the net balance will show and shall be the value of the franchise to be taxed under Sec. 4077.”

Appellee states the board assessed it by taxing one per cent of the par value of its capital stock. Such manner of assessment is not tenable, nor one of the three rules fixed by the statute to arrive at the “proper proportion.” Par value has nothing to do with capital stock value. A share of stock of the par value of \$100 may sell at \$5 per share, or at \$15,000 per share. I could give the court instances in each case.

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In the case of Philadelphia Steamship Company v. Pennsylvania, 122 U. S. 338-340 and 342, it is said (Earnings Basis):

“Of what use would it be to the ship-owner, in carrying on interstate and foreign commerce, to have the right of transporting persons and goods free from State interference, if he had not the equal right to charge for such transportation without such interference? The very object of his engaging in transportation is to receive pay for it. If the regulation of the transportation belongs to the power of Congress to regulate commerce, the regulation or fares and freights receivable for such transportation must equally belong to that power; and any burden imposed by the State on such receipts must be in con-

695      flict with it. \* \* \* The State may tax its internal commerce, but if an act to tax interstate or foreign commerce is unconstitutional, it is not cured by including in its provisions subjects within the jurisdiction of the State. Nor is a rule prescribed for carriage of goods through, out of, or into a State, any the less a regulation of transportation because the same rule may be applied to carriage which is wholly internal.

“If this case stood alone, we should have no hesitation in saying that it would entirely govern the one before us; for, as before said, a tax upon fares and freights received for transportation is virtually a tax upon the transportation itself.

“If such a tax is laid, and the receipts taxed are those derived from transporting goods and passengers in the way of interstate or foreign commerce, no matter when the tax is collected, whether at the time of realizing the receipts, or at the end of every six months or a year, it is an exaction aimed at the commerce itself, and is a burden upon it, and seriously affects it. A review of the question convinces us that the first ground on which the decision in *State tax on Railway Gross Receipts* was placed is not tenable, that it is not supported by anything decided in *Brown vs. Maryland*; but, on the contrary, that the reasoning in that case is decidedly against it.

“The second ground on which the decision referred to was based was, that the tax was upon the franchise of the corporation granted to it by the State. We do not think that this can be affirmed in the present case. It certainly could not have been intended as a tax on the corporate franchise, because, by the terms of the act, it was laid equally on the corporations of other States doing business in Pennsylvania. If intended as a tax on the franchise of doing business—which in this case is the business of transportation in carrying on interstate and foreign commerce—it would clearly be unconstitutional.”

The amendment of 1906 to Sec. 4081 is unconstitutional, because it is:

First, It is an assessment of a franchise to do,  
 696 exercised within other States and not in this State.  
 Such property is not subject to assessment in this  
 State.

Second. It is an assessment on the gross receipts of steamships and railroads derived from the transportation of property by sea and between different States and foreign countries and is therefore unconstitutional and void.

In the case of Philadelphia Steamship Company v. Pennsylvania, 122 U. S. 338-340-342 and 344, it is said:

“If such a tax is laid, and the receipts taxed are those derived from transporting goods and passengers in the way of interstate or foreign commerce, no matter when the tax is collected, whether at the time of realizing the receipts, or at the end of every six months or a year, it is an exaction aimed at the commerce, itself, and is a burden upon it, and seriously affects it. A review of the question convinces us that the first ground on which the decision in State tax on Railway Gross Receipts was placed is not tenable; that it is not supported by anything decided in *Brown v. Maryland*; but, on the contrary, that the reasoning in the case is decidedly against it.

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697      poration engaged in that business, we are clear that a tax or other burden imposed on the property of either corporation because it is used to carry on that commerce, or upon the transportation of persons or property, or for the navigation of the public waters over which the transportation is made, is invalid and void as an interference with, and obstruction of, the power of Congress in the regulation of such commerce."

In the case of *California v. Pacific Railroad Co.*, 127 U. S. 29, 33, 34, 40, and 41 it is said:

"That last section shows explicitly that, in regard to a railroad, the State Board has power to assess only five things, the *franchise, roadway, road-bed, rails, and rolling stock*; the *county boards* are authorized to assess all the rest of the property. If the State Board includes in its assessment any more of the railroad property than it is authorized to do, the assessment will be *pro tanto* illegal and void. If the unlawful part can be separated from that which is lawful, the former may be declared void, and the latter may stand; but if the different parts, lawful and unlawful, are blended together in *one indivisible* assessment, it makes the entire assessment illegal. This is so well settled that it needs no citation of authorities farther than to refer to the opinion of this court in the former cases (418 U. S.). In the present assessments, all parts of the property are blended together and are inseparable. If it be true, therefore, that property not authorized to be included in the assessments is included therein, the assessments must be declared void. \* \* \* Assuming, then, that the Central Pacific Railroad Company has received the important franchises referred to by grant of the United States, the question arises whether they are legitimate subjects of taxation by the State. They were granted to the company for national purposes and to subserve national ends. It seems very clear that the State of California can neither take them away, nor destroy or abridge them,

nor cripple them by onerous burdens. Can it tax them? It may undoubtedly tax outside visible  
 698 property of the company situated within the State.

That is a different thing. But may it tax franchises which are the grant of the United States? In our judgment, it cannot. What is a franchise? Under the English law Blackstone defines it as 'a royal privilege, or branch of the king's prerogative, subsisting in the hands of a subject.' 2 Bl. Com. 37. Generalized, and divested of the special form which it assumes under a monarchial government based on feudal traditions, a franchise is a right, privilege, or power of public concern, which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration, either by the government directly, or by public agents, acting under such conditions and regulations as the government may impose in the public interest, and for the public security. Such rights and powers must exist under every form of society. They are always educed by the laws and customs of the community. Under our system, their existence and disposal are under the control of the legislative department of the government, and they cannot be assumed or exercised without legislative authority. No private person can establish a public highway, or a public ferry, or railroad, or charge tolls for the use of the same, without authority from the Legislature, direct or derived. These are franchises. No private person can take another's property, even for a public use, without such authority; which is the same as to say that the right of eminent domain can only be exercised by virtue of a legislative grant. This is a franchise. No person can make themselves a body corporate and politic without legislative authority. *Corporate* capacity is a franchise. The list might be continued indefinitely. \* \* \* Recollecting the fundamental principle that the Constitution, laws, and treaties of the United States are the supreme law of the land, it seems to us almost absurd to contend that a power given to a person or corporation by the United States may be subjected to taxation by a State. The power conferred emanates from, and is a portion of, the power of the

699 government that confers it. To tax it, is not only derogatory to the dignity, but subversive of the powers of the government, and repugnant to its paramount sovereignty. It is unnecessary to cite cases on this subject."

In the case of *Fargo v. Hart*, 193 U. S. 499, it is said:

"The general principles to be applied are settled. A State cannot tax the privilege of carrying on commerce among the States. Neither can it tax property outside its jurisdiction belonging to persons *domiciled elsewhere*. On the other hand, it can tax property permanently within its jurisdiction although belonging to persons domiciled elsewhere and used in commerce among the States. And when that property is part of a system and has its actual uses only in connection with other parts of the system, that fact may be considered by the State in taxing, even though the other parts of the system are outside the State. The sleepers and rails of a railroad, or the posts and wires of a telegraph company, are worth more than the prepared wood and the bars of steel and the coils of wire, from their organic connection with other rails or wires and the rest of the apparatus of a working whole. This being clear, it is held reasonable and constitutional to get at the worth of such a line in the absence of anything more special, by a mileage proportion. The tax is a tax on property, not on the privilege of doing business, but it is intended to reach the intangible value due to what we have called the organic relation of the property in the State to the whole system. \* \* \* The assessment being had, for the reason that we have stated, the Board of Tax Commissioners acted without jurisdiction, according to the Supreme Court of Indiana."

In the case of *Delaware, Lac. & West. R. R. Co. v. Pennsylvania*, 198 U. S. 353, 354, 356, 357, and 360, it is said:

700 "This court has also frequently held that a tax on the value of the capital stock of a corporation is a tax on the property in which that capital is invested, and in consequence no tax can thus be levied which includes property that is otherwise exempt. *Bank of Commerce v. New York City*, 2 Black, 620; *Bank tax case*, 2 Wall, 200; *Pullman's Car Co. v. Pennsylvania*, 141 U. S. 18, 25; *Fargo v. Hart*, 193 U. S. 490-498-499. \* \* \* So if the State cannot tax tangible property permanently outside the State and having no situs within the State, it can not attain the same end by taxing the enhanced value of the capital stock of the corporation which arises from the value of the property beyond the jurisdiction of the State.

"We think the State court is right in deducting, as it does, the value of the tangible property, when permanently held in another State, and we think that for the same reason the same rule should obtain in the case of tangible property situated as this coal was. We cannot see the distinction, so far as the question now before the court is concerned, between a tax assessed upon the property, *eo nomine*, or specifically, when outside the State, and a tax assessed against the corporation upon the value of its capital stock to the extent of the value of such property, and which stock represents to that extent that very property. If the property itself could not be specifically taxed because outside the jurisdiction of the State, how does the tax become legal by providing for assessing the tax on the value of the capital stock to the extent it represents that property and from which the stock obtains its increased value? Can the mere name of the tax alter its nature in such case? If so, the way is found for taxing property wholly beyond the jurisdiction of the taxing power by calling it a tax on the value of capital stock or something else, which represents that property. Such a tax, in its nature, by whatever name it may be called, is a tax upon the specific property which gives the added value to the capital stock. \* \* \* (quoting *L. & J. Bridge Co. case*.) No difficulty can exist in applying the general rule in this case; for beyond all question,

the ferry franchise derived from Indiana is an incorporeal hereditament derived from and having its legal situs in that State. It is not within the  
 701 jurisdiction of Kentucky. The taxation of that franchise or incorporeal hereditament by Kentucky is in our opinion, a deprivation by that State of the property of the ferry company without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States; as much so as if the State taxed the real estate owned by that company in Indiana."

And in conclusion it was said:

"We decide nothing more than it is not competent for Kentucky, under the charter granted by it, and under the Constitution of the United States, to tax the franchise which its corporation the ferry company, lawfully acquired from Indiana, and which franchise or incorporeal hereditment has its situs, for purposes of taxation, in Indiana."

In the case of *Southern Building & Loan Association v. Norman*, 98 Ky. 301 and 302, it is said:

"The statute, whatever may be said of the nature of the tax it imposes, in express terms affects only business done within the State. The business traffic or commerce, if you please so to term it, of the corporation is purely internal or domestic. \* \* \* It is manifest that these provisions of the statute, so far from imposing a tax upon the receipts derived from the transportation of goods between other States and the State of Missouri, expressly limit the tax to receipts for the sum earned and charged for the business done within the State. This positive oft-repeated limitation to business within the State, that is business begun and ended within the State, evidently intended to exclude, and the language employed certainly does exclude, the idea that the tax is to be imposed upon the interstate business of the company. 'Business done within the State' can not be made to mean business done between that State and other States. (*Pacific Express Co. vs. Seibert*, 142 U. S. 339.)"

If the defendant is a holding company the State Board has no jurisdictional right to assess it because such companies are not liable to a franchise tax. If part of its business is there of a holding company and unquestionably it is, because it operates no railroad in Louisiana and Texas and owns millions of dollars worth of stocks and bonds in companies doing business in those States that portion of its property should be assessed under the general law and it is so decided in the case of Fidelity and Casualty Co. v. Coulter, 25 Ky. L. R. 201, wherein it is said:

"A company which is in name an insurance company, but is doing a guaranty or *security business in this State* is a like corporation within the meaning of Sec. 4077 and is therefore embraced by it. If any of these companies have been doing both an insurance business and also a guaranttee or security business as defined in the opinion referred to, then *it is liable for the tax of \$2 on each \$100 of gross premiums and is also liable to a tax on its franchise as a guaranttee or security company under Sec. 4077.*"

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The State Board of Valuation under Sec. 5, Art. 4, chapter 22, Acts of 1906, assessed the Southern Pacific Company for:

1907	at	\$2,374,189.00
1908	at	2,374,189.00

No other assessment was made against the defendant except that the county board assessed the defendant with bonds \$10,000,000.00 for the year 1908.

Because of the above authorities and the many good reasons hereinafter enumerated, Sec. 5 of the Act of 1906, under which the State Board assessment was made,  
703 is unconstitutional.

That being the case it necessarily follows that appellee not being subject to a franchise tax because it exercises no franchise in this State must be assessed under the general taxing law as a citizen of this State, or not at all.

The case of *Atlanta National Association v. Stewart*, 109 Ga. 91, and other cases hereinafter quoted, expressly decide if an Act assessing property in one manner is unconstitutional and void the property does not escape taxation but is assessed under the general taxing system of the State; that is under Sections 4020 and following of the Kentucky Statutes.

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Section 5 is clearly unconstitutional. The act makes a pretense of assessing "the intangible property, including its corporate franchises, stocks, bonds, securities, and choses in action," and the board assessed them at one per cent. of the par value of its capital stock although the Constitution and statute each provide that all property shall be assessed at its fair cash value.

The amendment was prepared by Judge Humphrey. There are many advantages in being taxed under an unconstitutional Act. It gives you a lever for favorable discrimination and if you receive no concessions by the Act, you appeal to the Courts against its unjust provisions. There is no danger, however, of the Southern Pacific Company assailing the constitutionality of the act as long as its property is assessed at one per cent of its fair cash value and it can plead that assessment or rather its citizenship in bar of an assessment of its  
 704 intangible property in another sovereignty.

In the case of the Board of Councilmen of City of Frankfort v. Stone, 22 Ky. L. R. 503, it is said:

“The purpose of a franchise tax is to reach the intangible property of the corporation and make it liable to taxation as like property or individuals. Personal property of an individual is taxed ordinarily in the jurisdiction of his residence without regard to its situs. If an individual who resides in Frankfort owned appellees’ franchise and property he would have to pay appellant the tax in contest. (Section 4082.) The residence of a corporation is, for most legal purposes, where its chief office or place of business is; and except where it is by law otherwise provided, its franchise tax should be paid in that jurisdiction.”

While the Legislature may authorize different modes of assessment, the rule of assessment of all property must be the same.

Section 5 of Art. 4, p. 130, Acts 1906, under which appellee was assessed is in conflict with Sec. 172 of the Constitution because it exempts defendant’s intangible property from assessment. It is contrary to Sec. 174 of the Constitution because defendant’s property is not taxed in proportion to its value, and at the same rate paid by individual property.

It is contrary to Subsection 15 of Section 59 because it is a special law relating to taxation.

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In the case of South Covington Street R’y Co. v. Bellevue, 20 Ky. L. R. 1188, it is said:

705     “A franchise is property, and it must under the Constitution pay the same rate of taxation paid by other property.”

In the case of *Atlanta National Association v. Stewart*, 109 Georgia 91, it is said:

“The next question is whether anything in the act prevents taxation of the property of these companies within the taxing district. On this point there are two contentions on behalf of the companies: (1) That the Legislature intended these taxes to take the place of, or as a substitute for, or commutation of *ad valorem* taxes. But a moment’s thought will show that this is only another way of saying that, while it is true the Constitution provides that all property shall be taxed according to value, and no property shall be exempted (except as specified in it), nevertheless the Legislature may levy a tax or accept a sum for or in lieu of a property tax, without reference to value; or may accept a business tax and exempt the property of the person paying it. The Legislature cannot do this. (2) The second contention is, that even if the position thus contended for by the companies be untenable and not in accordance with the Constitution, nevertheless, there is no machinery provided for the collection of an *ad valorem* tax against these companies. \* \* \* If the construction contended for be correct, then we would have a general tax act providing a mode and machinery for collecting *ad valorem* taxes on only a part of the taxable property of the State, and the result would be that the whole act would be unconstitutional and void; for an act which provides for an *ad valorem* tax on only a portion of the taxable property of the State would plainly be contrary to the provisions of the Constitution. If the construction contended for were correct, therefore, the State would have no valid tax act and the whole tax system of the State would be unconstitutional. No such construction will be put upon the act unless necessary. What is the correct construction, then? This: The Act of 1896 does provide for the assessment and levy of a uniform *ad valorem* tax on all the taxable property within the State. This does furnish authority sufficient to cover all taxable property, and it is expressly so declared. \* \* \* If a Legis-

lature can not exclude certain property directly from taxation *ad valorem*, it should seem that it can not do so indirectly by some process of withdrawing 'machinery.' To say that a Legislature can not pass a constitutional act exempting a piece of property, but can effect the same purpose by saying to the taxing authorities, 'You shall not use the ordinary machinery of taxation or any other mode as to that property,' is a mere variation of terms, and not a variation, it seems to me, in substance. The general tax laws furnish general machinery. An unavailing effort to withdraw one cog from the machinery will not stop it, but it will grind on the same. \* \* \*

"It specifies certain property that may be exempted, and then declares that laws exempting any other shall be void. Thus the only classification of property, relative to taxation, that is made or authorized, is into exempt property and property subject to be taxed, and taxation on all property subject to be taxed is required to be *ad valorem*, that is according to value. Once for all, the Constitution has enumerated the two classes of property, which enumeration the Legislature, the courts, and the citizen must recognize as exhaustive; property, whatever its species, is simply exempt or subject to be taxed. If exempt, it pays nothing, if subject, the amount it shall pay is measured by multiplying the fixed rate into the actual value. The result will be, in every instance, that all persons who own taxable property of equal value will pay the same amount of taxes, and all who own more than others will pay more, and all who own less will pay less. If this is not a clear, plain, and pointed statement, I despair of attempting to express the idea more strongly."

In the case of *Levy v. Louisville*, 97 Ky. 399, 400 and 401, it is said:

707 "The relief sought is based on the ground that the ordinance levying this tax is void, for the reason the city council failed and refused to follow the mandate of the Constitution, requiring all taxation to be uniform within the territorial limits in which

the burden is imposed, and for the still greater reason of their failure to levy an *ad valorem* tax upon the personal as well as the real estate located within the city, and subject to taxation. \* \* \* If there has been a fundamental change in the mode of assessment, in ascertaining the value of real and personal property, it must be followed, and the suggestion or argument that the mode adopted differing from the provisions of the organic law will produce the same result, that of uniformity and equality in imposing the burden, cannot be permitted to control the decision of this question, even if more just and equal in its results. \* \* \* The power to impose an income tax, a license or franchise tax, is expressly given by the Constitution to the Legislature, and the exercise of such powers by municipal governments must be derived from the legislature enactments, but there is no authority, express or implied, conferred by the Constitution on either the State or municipal Legislature to substitute a *license tax in lieu of the ad valorem* system. No income tax has been imposed by the Legislature, but a license tax has been imposed for State and county purposes, and the power conferred upon municipalities to exact license fees, which is in effect a license tax."

As said in the Morrel Company case:

"It is undoubtedly true that a State may classify the various subjects of taxation within its territory upon a reasonable basis, and so long as equality prevails within the limits of the classification established, no valid complaint can be made of a discrimination as between the classes. Section 174 of our Constitution requires EQUALITY OF TAXATION, and the Fourteenth Amendment of the Constitution of the United States provides that no State shall deprive any person of his 'property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' Now, while, as said before, the State MAY CLASSIFY its VARIOUS SUBJECTS of taxation, this classification must not be arbitrary, and the State sta-

tute which makes an arbitrary classification is void, both under the Constitution of our own State and of the provisions of the Fourteenth Amendment above quoted. (Gulf, Colorado & Santa Fe R'y v. Ellis, 165 U. S. 150; Atchison, Topeka & Santa Fe R. R. Co. v. Matthews, 174 U. S. 96.)"

Such I submit is not the case with the amendment to Section 4081 of the Kentucky Statutes.

The argument made by counsel for appellee in support of a contention that it must be taxed as the Louisville & Nashville Railroad and similar companies doing business and operating roads in this State is sound in theory and principle in an assailment of the constitutionality of Sec. 4081 as amended. I agree, if the Southern Pacific Company exercised any special privileges in this State or operated lines in this State, that it must be assessed by this State in the same manner and that in all cases there must be equality of taxation.

I insist however, that the assessment of the Southern Pacific Company at one per cent of the par value of its stock, is not authorized. That that portion of Section 4081, giving to the State Board the power to assess a railroad or other corporations organized under the laws of this State and having their lines outside of this State to apportion to this State for taxation not less than one per cent of its capital stock, as "the value of its intangible property, including its corporate franchise, stocks, bonds, securities, and choses in action" is class legislation, prohibitive of equality of taxation, denying to other property a similar rule of assessment which is assessed at its fair cash value. It is an assessment of franchises derived from other sovereignties; of earnings made in other States, and exempts appellee's property from an *ad valorem* tax.

The following quotation from appellee's brief, page 90, seems in point:

“Again, we call the attention of the court to the case of *Raymond vs. Chicago Union Traction Co.*, 207 U. S. 20. We find it difficult to select from this case portions for quotation. It will suffice, we believe, to point out that it holds that where an assessing board of a State, in fixing the value of the property of corporations for taxation, discriminates against certain corporations, this discrimination is the act of the State and is violative of the Federal Constitution. It appeared that the value of the property of certain corporations was fixed in one way and the value of certain other corporations was fixed in a different way, resulting in a wide discrimination. The court held that the assessment based on these principles was void as violative of the Federal Constitution.”

### VALUATION.

The State Board of Valuation and Assessment assessed the property of defendant at one per cent of its fair cash value under a special law utterly disregarding the constitutional provision that property shall be assessed at its fair cash value.

Assuming that the act is not unconstitutional, this valuation in itself is such a gross under-valuation as to render the assessment void. The report of appellee shows its intangible property to be worth \$200,000,000.00. The figures were uncontradicted, they were the only evidence and were conclusive upon the board. Had you or I made such a report it would have been the assessor's duty to have assessed the property against us at \$200,000,000.00. The clause “the proper proportion and not less than one per cent of its capital stock” does not validify the assessment.

710 Assuming the constitutionality of the statute the assessment was not made in the manner required by statute, “the capital stock” was not

considered and even if it was there was no reason for fixing it at one per cent when we pay 80 per cent or more.

The following cases are directly in point in support of the contention of plaintiff.

In case of Revenue Agent vs. Clarke, 80 Miss. 150:

“By way of salvo to his conscience he did not make oath to the assessment, and the compliant assessor did not require him to do so, both joining deliberately in the evasion of the law, and yet without having complied with the law—nay, whilst deliberately violating it, and whilst the assessor deliberately violated it—it is gravely argued that this assessment has passed into judgment by the joint action of the citizen and the tax authorities, and is *res adjudicata* and can not be inquired into. The doctrine of State vs. Simmons, 70 Miss. 490 (12 So. 477), is a most wholesome doctrine on this point, and will be firmly upheld by us in all proper cases; but the assessment that becomes *res adjudicata* is an assessment made in conformity with law, and not in conscious and deliberate defiance of the law, on the part of both the taxpayer and the assessor. Courts do not sit to enable law-breakers to profit by their own wrong doing. The proposition that the assessment in the case, made in intentional and willful disregard of all the sanctions required by law to make it an assessment, is *res adjudicata*, is adhorrent to justice, and would put a premium on fraud. Authority is not wanting to sustain our view. See Lawrence vs. City of Janesville, 46 Wis. 364 (1 N. W., 338, 50 N. W. 1102); Grager vs. Prout, 48 Ohio St. 89 (26 N. E. 1013); Morris vs. Jones, 150 Ill. 542 (37 N. E. 928). As to this proposition, also, however, our Brother Calhoun dissents.

“This brings us to the chief point, as to which we differ. The question is precisely this: Where a taxpayer actually has, say \$100,000 of solvent  
 711 credits, which are actually collectible for the full value, and he knows that fact, and so regards them, and intentionally undervalues them, by returning them, say at \$5,000—as probably collectible, even

supposing him to have sworn to his assessment, have not the \$95,000 escaped taxation by reason of not having been assessed? \* \* \* Since an assessment is the listing and valuation of property, and since the roll is not conclusive against the public as to what property the taxpayer owns, it follows that the judgment of the board can only be conclusive of these two facts: First, as against the taxpayer, that he is the owner, or taxable for the property shown on the roll; second, as against the taxpayer and the public, that the valuation of the enumerated property is as finally shown on the roll. \* \* \* It is too clear for controversy that under the statute property which has escaped taxation can afterwards be assessed. In reference to solvent credits the most that can be said is that whether a particular credit has been omitted altogether or only undervalued can not be discovered by an examination of the roll, and is known only to the taxpayer. The foundation of the claim that such property can not be assessed in a subsequent year is that it has already been assessed, and the claim that it has been assessed rests, in its turn, upon the proposition that it can not be told whether it has been or not. Take the propositions, as to which there can not be ground for contention: (1) Property which has been assessed and valued can not be reassessed; (2) property which has not been assessed can be subsequently put on the rolls and taxed. To which class shall be assigned \$5,000 of solvent credits owned by the appellee in 1900, it being proven that he then had \$10,000 of notes secured by mortgage, which he then knew to be worth their face value, and it further appearing that he paid taxes only on \$5,000. Two things are certain: First, in no event can the appellee be required to pay on a greater amount than he justly ought; second, unless the additional assessment is upheld, he unquestionably escaped the payment of taxes on one half of his solvent credits. It must be borne in mind that our

712 Constitution is mandatory, and our statute presumably intends that he shall pay on the whole \$10,000, and that whether the \$5,000 which has not

been taxed escaped or is subject to taxation depends upon the question whether the words of the statute shall be so construed as to subject it to, or exclude it from, taxation."

In the case of Paducah Street Railway Co. vs. McCracken Co., 20 Ky. L. R. 1295, it is said:

"Some allegations are made in the petitions tending to show that, at some time not definitely stated, the assessor of McCracken County, and perhaps others, only valued the property listed for taxation at two-thirds of its value. If any such valuation has been adopted or acted upon by any of the assessors of the State since the adoption of the present Constitution and the Acts of 1891, etc., they simply acted in direct violation of the Constitution and of the law, because both the Constitution and the Acts of 1891, etc., require all property to be listed for taxation at its fair cash value. \* \* \* Section 172 of the Constitution provides that all property not exempt from taxation shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair, voluntary sale; and it is further provided that every officer or other person authorized to assess values for taxation who shall commit any willful error in the performance of his duty, shall be deemed guilty of misfeasance, and upon conviction thereof shall forfeit his office and be otherwise punished as may be provided by law. This provision imperatively requires that all property should be assessed at its fair value, and also provides that any one willfully failing to perform such duty shall be punished."

In the case of Weyerhauser vs. Minnesota, 176 U. S. 557 and 558, it is said:

713 "The Legislature may authorize different modes of assessment for different properties, providing the rule of assessment is the same. \* \* \* We agree with the Supreme Court of the State that

a gross undervaluation of property is within the principle applicable to an *entire omission* of property. If it were otherwise, the power and duty of the Legislature to impose taxes and to equalize their burdens would be defeated by the fraud of public officers, perhaps induced by the very property owners who afterwards claim its illegal advantage.

"If an officer omits to assess property or grossly undervalues it, he violates his duty, and the property and its owners escape their just share of the public burdens. In *Stanley vs. Supervisors of Albany*, 121 U. S. 535, we held that against an excessive valuation of property its owner had a remedy in equity to prevent the collection of the illegal excess. It would be very strange if the State, against a gross undervaluation of property, could not in the exercise of its sovereignty give itself a remedy for the illegal deficiency."

In the case of *State vs. Lawler*, 103 Wis. 465, it is said:

"The board was bound to take these uncontradicted statements of the witnesses under oath as to the value of the property, and should have corrected the assessment roll according to them, for, where the evidence is undisputed and there is no proof whatever to sustain the decision of the board, they can not arbitrarily and capriciously place a value upon the real estate different from that placed upon it by the witnesses. They have no more legal power to decide against all the testimony in respect to the value of property than a court has to decide against all the testimony in respect to the value of property, than a court has to decide against all the evidence produced before it."

In the case of *State vs. Losby*, 115 Wis. 63, it is said:

714 "In proceedings of a purely judicial character the court having jurisdiction of the person and the subject-matter may render a valid judgment, regardless of how grievously it may err on questions of law

or fact in reaching that result. But in the experience of *quasi* judicial officers clear violations of law in reaching a result which is within the power of the officer or body to reach proceeding in a legal manner are considered as jurisdictional errors (*State ex rel. Dumer vs. Heugin*, 110 Wis. 189-239), the idea being that in reviewing the proceedings of officers or bodies exercising *quasi* judicial powers the function of the writ extends to keeping them within their jurisdiction as well as reviewing matters of original jurisdiction (citing cases). If a board in reaching a determination is required to act upon evidence and it acts without evidence or any evidence warranting the result reached in any reasonable view of it, or if it is required to receive evidence and refuses to do so, it commits a clear violation of law—a jurisdictional error—and its final determination may be challenged as void on that ground, if the error appears upon the record, or official history of the proceeding in the nature of a record which the law requires to be kept, because the error is deemed to be of a jurisdictional nature.”

In the case of *Coulter, Auditor, vs. Louisville Bridge Co.*, 24 Ky. L. R. 811, it is said:

“It must be borne in mind that this is not a case of omitted listing or assessment, nor is there a suggestion even of a mistake on the part of the officers. The question resolves itself into this: Is there a time where the action of the assessing officer becomes final, both as to the citizen and the taxing power? The question is not here involved as to the effect of the assessor’s act if he had *erroneously* decided that appellee’s property in question was not liable to taxation; nor is the question of the power of an assessor to exempt the property of one taxpayer *from its proper share* of the burden involved, for in his case no such purpose is stated or intimated. On the contrary, it was shown that the assessing board

715 actually acted upon the identical evidence required by the statute, exercised their judgment as to fixing the value of the property, and found the fact to

be that when there was applied to appellee the same standard by which the valuation of the franchises of all other corporations in this State was arrived at, and the one approved by this court in the case of Henderson Bridge Company vs. Commonwealth of Kentucky, 99 Ky. 623, appellee's franchise had no taxable value. That this conclusion was honestly arrived at, and was correct, is not denied.

"If the board of 1898 had fixed a valuation of \$100,000 on appellee's franchise, acting under the same circumstances as shown in this case, and appellee had paid the tax, could appellant and his associates, constituting the present board, have ignored that action and revalued and re-assessed the franchise? If they could, then there is no end to this thing, nor would there be to any assessment or listing of any property for taxation by any assessing board or assessor.

"We are of the opinion, and hold, that when the proper assessing officers, *within the time* and substantially in the manner prescribed by statute, have acted in considering and fixing the valuation upon property liable to assessment for taxation, and no relief has been obtained within the time allowed by statute for correcting their action, if erroneous, that action is final. The judgment and action of the assessor, based upon the legal evidence then obtainable and at hand and as fixed by statute, when recorded in the proper tax lists, in the very nature of things, should be conclusive upon the State as well as against the taxpayer."

The premises considered, it is respectfully submitted that the only composite conclusion to be drawn from the above authorities is that:

1st. The State Board of Valuation and Assessment can not assess the appellee; or if it can, the assessment is void, because of the gross undervaluation.

2nd. That the taxable situs of defendant's  
716 intangible property is at Beechmont, Kentucky,  
as is also the taxable situs of its steamships.

3rd. That the value of said property omitted from assessment is as follows:

1907. Steamships .....	\$4,878,072.00
1907. Momus and Antilles 80% completed .....	1,666,400.00
1907. Intangible property .....	144,559,259.77
1908. Steamships .....	7,724,189.00
1908. Intangible property .....	157,758,419.13

This property if it belonged to a private citizen of this State would be taxable at his domicile, why is the same changed for appellee. This court would never uphold an assessment of the property of an individual under a statute similar to the amendment of 1906 to Section 4081. Why should it for appellee? Nor would an assessment of one per cent of the value of the property actually listed be upheld—such a law this court would declare unconstitutional, why should it not in this case?

No tangible property having an actual situs elsewhere is sought to be assessed. The assessment of \$2,000,000.00 made by the State Board is not a proportionate assessment, even if the company did business in every State in the Union, instead of only Louisiana, Texas, New Mexico, Arizona, California, Oregon, Nevada and Utah.

While the amount involved almost staggers, the law justifies. *Amount is a relative matter.* The \$2,000,000 assessment of the State Board is like assessing a \$1,500 cottage at \$15.

The historic remarks quoted at the close of appellee's brief, the one of Aristides that "Nothing, oh Athenians, could be more expedient, but at the same time nothing could be more unjust," the other of Field Marshal  
717 Blucher, "God, what a town to loot!" suggest another historic utterance.

When I recall that this \$400,000,000 holding company, erroneously called a railroad, directed by a great stock

jobber, improperly named a railroad king, whose residence is one thousand miles from this system and whose office is in Wall Street, and whose counsel admit that the steamships worth \$8,000,000.00 and the stocks and bonds worth \$300,000,000.00 acknowledge no sovereign and pay no tribute, I wonder if it is not both expedient and just to tax, and suggest a lesson of few words taught by the Sea of Galilee 1900 years ago to some humble fishermen, to "render unto Cæsar the things which are Cæsar's." But does that apply only to the humble; is it for the frenzied financier, or this tenacled wonder of combined corporate wealth, the Southern Pacific Company?

Respectfully submitted,

M. J. HOLT,  
*Attorney for Appellant.*

JOSEPH SELLIGMAN, *County Attorney,*  
*Of Counsel.*

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Be it remembered that on the 28th day of July,  
718 1909, the appellee filed response to the petition for  
rehearing in the office of the Clerk of the Court of  
Appeals. Which response is as follows:

719

# Court of Appeals of Kentucky.

No. 95.

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COMMONWEALTH OF KENTUCKY,

By, &c., . . . . . *Appellant,*

*VERSUS*

SOUTHERN PACIFIC COMPANY, . . . . . *Appellee.*

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## RESPONSE TO PETITION FOR REHEARING AND PETITION FOR MODIFICATION OF OPINION.

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HUMPHREY, DAVIE & HUMPHREY,  
Attorneys for Appellee.

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(Endorsed.) Filed July 28, 1909. Napier Adams, C. C. A.

## 720 COURT OF APPEALS OF KENTUCKY.

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COMMONWEALTH OF KENTUCKY, BY ETC., - *Appellant,*  
*vs.*  
 SOUTHERN PACIFIC COMPANY, - - - - - *Appellee.*

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RESPONSE TO PETITION FOR REHEARING AND  
 PETITION FOR MODIFICATION OF OPINION.

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We do not propose to answer at length the petition for rehearing filed in this case by counsel for the Commonwealth. It is simply a re-argument of the case; that is, the same arguments are used as were used in the former brief and in the oral hearing, and substantially the same authorities are cited as were then and there cited. We think that after a case has been as fully considered as this one has been, some respect, at least, should be paid to the opinion of the court. We will assume that this opinion was deliberately formed. There are certain statements in this brief, however, which are so remarkable that we think attention should be called to them.

On page 6 of the brief it is attempted to divide the lines of the Southern Pacific Company into three classes. Near the bottom of the page there is this statement: "Controls by stock ownership 9,009.23 miles, and leases 350.70 miles."

It is only necessary to turn to the record to  
 721 show that the Southern Pacific Company, all these  
 years, operated under lease 6,000.85 miles (R. 482  
 to 487), and that there were operated by companies own-

ing railroads forming a part of the transportation system of the Southern Pacific Company, 3,703.97 miles, or a total of 9,704.82 miles. Besides this, the Southern Pacific Company operated ferries and water lines—4,905.69 miles. And yet it is gravely asserted that the Southern Pacific Company is not a common carrier company or a company performing a public service, but is a holding company. Moreover, the leases under which the Southern Pacific Company operates these lines are in the record, beginning at page 487 and following through many pages. How, therefore, counsel can say that the Southern Pacific Company leases only 350.70 miles, we can not understand.

Again, in regard to the payment of taxes by the Southern Pacific Company, counsel, in his petition for rehearing, on page 11 attempts to quote from a stipulation. We ask Your Honors to look at this stipulation as it appears in the record and compare it as quoted. It will be noted that the fourth paragraph of the stipulation is quoted, and then the sixth. Why not quote the fifth? It is as follows (p. 82):

“That the various proprietary or constituent companies paid taxes to the State of California for the years in litigation, on the assessed value of their property, including franchises. The franchise assessment is merged with the general property assessment, the franchise being treated as though  
722 one of the elements of value of the property.”

Again, the sixth paragraph of the stipulation is quoted as to the State of Oregon. Why not quote the letter to the Governor of Oregon which is on page 85 and which shows that for the past three years the assessment of the Oregon & California Railroad has been made uniformly to the Southern Pacific Company?

Again, why make an elaborate statement on page 13 of the brief, as to the amount of taxes paid by the South-

ern Pacific Company as an independent corporation, and omit the taxes paid on its leased lines as fully given on pages 581 and following? The Southern Pacific Company pays taxes on its leased lines exactly as the Chesapeake & Ohio pays taxes on its leased lines in Kentucky, and exactly as the Illinois Central Railroad pays taxes on its leased lines in Kentucky.

Again, acting under the statute as amended in the year 1906, the State Board of Valuation and Assessment valued the capital stock of the Southern Pacific at \$237,418,958.64 for 1907 and 1908, and took one per cent thereof as the part to be apportioned to Kentucky (R., 65). This is complained of, and yet, by a stipulation made in this very case, found on pages 206 and 207 of the record, it appears that the average market value of the capital stock of the Southern Pacific Company, as of June 30, 1906, and September 1, 1906, was \$179,753,783.85; that, deducting from this the value of the tangible property of the Company as of June 30, 1906, 723 and September 1, 1906, amounting to \$35,194,524.08, the fair cash value of the intangible property of the Southern Pacific Company (and this includes all of its stocks, bonds, and choses in action—everything which under the Act of 1906 is to be taxed by the State Board of Valuation and Assessment) was \$144,559,259.77; and, going through the same method of calculation, for the next year, \$157,758,419.03. Counsel seriously complains, therefore, that the State Board of Valuation and Assessment fixed the capital stock as being \$237,000,000, when by stipulation counsel himself agreed that one year it was worth only about \$144,000,000, and another year, only about \$157,000,000. (We refer to the intangible property meant by the Act of 1906 to be included.) This method of argument we confess we do not understand at all.

We do not propose to re-argue the constitutionality of the Act of 1906. It simply put into form of words

what had been the practical construction of the statute in regard to the apportioned assessment of properties like that of the Southern Pacific Company prior to that date.

As for the intangible property of the Southern Pacific Company, we mean its character. Reference to the deposition of William Mahl will make this clear. Thus, in question 111, Mr. Mahl is asked:

724       “Do you state, or mean to state, in your answer to the last two questions, that the Southern Pacific Company, during the years embraced in this litigation, purchased no bonds, stocks, obligations, or securities of any other corporation, company, or association, government, State, territory, or individual, except stocks, bonds, and securities of the several leased lines or lines operated under their own organizations?

“A. It did not purchase any stocks, bonds, securities, etc., except such as were incidental to the operation of its lines or necessary to the development of such transportation lines.

“112. During the years embraced in this litigation, from September 15, 1901, to June 30, 1907, did the Southern Pacific Company purchase, sell or negotiate any bonds, stocks, or obligations of any company whatever other than the bonds and stocks representing the indebtedness or obligations of the other leased lines or lines operated by their own organizations referred to in this litigation?

“A. Not that I know of, except that during this period the Southern Pacific Company has sold its own bonds and stocks” (p. 466).

There is absolutely no contradiction whatever to this statement. We have shown in this record and in our former brief that the character of stocks, bonds, and securities owned by the Southern Pacific Company is exactly the character of securities owned by other railroad companies.

We do not propose to re-argue the question of the liability of the ships of the Southern Pacific Company to taxation in Kentucky. We hope, however, that

725 Your Honors, following the example in other cases, will, instead of remanding this case to the court below, here make a definite order fixing the amount of the assessment. This can be readily done, and we believe that counsel for the State, as well as ourselves, desire it.

For the year 1907, that is, as of September 1, 1906, the county court assessed the floating equipment of the Southern Pacific Company at \$5,111,752, and as of September 1, 1907, assessed this same floating equipment at \$8,115,643. After Judge Peter's judgment was entered there was an appeal to the circuit court. The circuit court held the ships not taxable, but while the case was pending in the circuit court the Southern Pacific Company took the deposition of C. W. Jungen (p. 408). Captain Jungen agreed with William Mahl that the total value of the floating equipment of the Southern Pacific Company, on September 1, 1906, and September 1, 1907, was as fixed by Judge Peter, but he showed that certain of the floating equipment of the Southern Pacific Company had acquired a local situs, under the rule laid down in *Old Dominion Steamship Company vs. Virginia*, 198 U. S. 299; that is, that there were certain tugs and barges belonging to the Southern Pacific Company which never left the harbor of New York or Galveston.

The assessment as of September  
 726 1, 1906, for the year 1907, the county  
 court fixed at .....\$5,111,572.00

From this are to be deducted the follow-  
 ing tugs and barges which acquired a local  
 situs as above mentioned:

Tug El Amigo .....	\$26,907.81	
Tug Confidence and 28 barges	242,951.03	
Barge El Toro .....	13,532.75	283,391.59

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Leaving the remainder at .....\$4,828,180.41

And from the assessment for the year  
 1908, which the county court fixed at .....\$8,115,643.47  
 there should be deducted:

Tug El Amigo .....	\$25,562.42	
Tug Confidence and 28 barges	230,803.48	
Tug El Chico .....	49,518.81	
Tug El Toro .....	68,718.23	
Barge El Toro .....	12,856.11	
Barge Cyclops .....	27,385.42	
Barge Penates .....	8,974.58	
Barge Minerva .....	9,480.00	433,299.05

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Making a net of .....\$7,682,344.42

There was in the lower court, and is in the petition  
 for a rehearing, some contention that a part of the value  
 of the steamships Momus, Antilles, and Creole should  
 be included in the assessment for the year 1907, because  
 they were partially completed on September 1, 1906. The  
 following is the testimony in regard to these three ships:

"171. Now, take the Momus, where was she enrolled in 1906 and 1907?

"A. In 1906 and 1907 she was enrolled in New York.

"172. What was the date of her building?

727 "A. She was built in 1905; that is to say, she was laid down in 1905, but she went into commission in December, 1906.

"173. By going into commission you mean going into service?

"A. Service—yes.

"174. What was her cost?

"A. Her cost was \$1,040,000.

"175. And between what ports did she ply in 1906 and 1907?

"A. She plied for a period of three months between New York and Havana.

"176. What three months is that? Do you know?

"A. That was January, February, and March of 1907.

"177. During the rest of the year where did she ply?

"A. Between New York and New Orleans."

\* \* \* \* \*

"184. What about the Antilles? Where was she enrolled in the years 1906 and 1907?

"A. She was enrolled in 1906 and 1907—she wasn't in commission and wasn't received until 1907; she was enrolled in New York.

"185. What was her cost?

"A. Her cost was \$1,043,845.

"186. Will you state when she was put in commission by the Southern Pacific Company?

"A. In the month of May (the date I don't exactly remember), 1907.

"187. Between what ports did she ply?

"A. Between New York and New Orleans."

\* \* \* \* \*

728 "193. Going back to the Momus a moment, when was the Momus received by the Southern Pacific Company?

"A. In the month of November, 1906.

"194. Who built her?

"A. William Cramp & Sons Ship & Engine Building Company, I believe is the name of the company, of Philadelphia.

"195. Now, take the Creole, where was she enrolled during the years 1906 and 1907? Is she a tug or a ship?

"A. She is a ship; she wasn't enrolled until 1907—about June, 1907.

"196. Where was she enrolled?

"A. In New York.

"197. What was the date of her building?

"A. 1907.

"198. When was she received by the Southern Pacific Company?

"A. That same date—June, 1907.

"199. What was her cost?

"A. \$1,018,198."

\* \* \* \* \*

"254. Now, the steamship Momus, you say that was built in 1905?

"A. Well, she was laid down.

"255. What do you mean by the term 'laid down'?

"A. By 'laid down' they lay the keel of a ship—that is called laying down a ship; her keel was laid down in 1905.

"256. When was she built and ready for service, but not turned over to the Southern Pacific Company?

729 "A. She was turned over to the Southern Pacific Company within twenty-four hours after she was completed.

"257. When was she paid for by the Southern Pacific Company?

"A. She was paid for on an installment basis as she was being built, on a ten-per-cent basis; when

she was ten per cent completed the first payment was made on her; when twenty per cent was completed the second payment was made on her; and so on until she had made her trial run there was one payment left due on her, that payment was not made; there was some extra work done on her which involved some adjustment of bills, but it was fully six months, I guess, before the final adjustment was made.

"258. When was the trial made of the Momus?

"A. On her way around from Philadelphia.

"259. I say, on what date?

"A. I think it was the 23rd or 24th of November, 1907.

"260. 1906 you mean?

"A. 1906—yes.

"261. Wasn't that vessel practically completed, so far as the building was concerned, on September 1, 1906?

"A. No, sir.

"262. What was yet to be done on it?

"A. Well, there was a lot of work to be done on her; I can't remember all these details. She was inspected and not ready for acceptance, because she was not completed; there was some work on her boilers; there were leaks found in her boiler that had to be remedied, and there was a lot of unfinished joiner work; in fact, we brought around with us a number of joiners and ship fitters; the smoking-room was not completed when we received her, and they  
730 worked on her for several days at New York.

"263. That is practically a new ship?

"A. Yes.

"264. And she was worth her cost price, was she not, on—

"A. Well, she was worth her cost price—yes.

"265. On September 1, 1906, what percentage of that ship was completed?

"A. I could not tell you that.

"266. As much as eighty per cent?

"A. Yes; probably ninety.

"267. Now, the steamship Antilles—that was turned over to you in May, 1907?

"A. In May, 1907—yes, sir.

"268. What per cent of that ship was completed on September 1, 1906?

"A. September 1, 1906, I should say about sixty-five per cent.

"269. On September 1, 1907, that vessel was practically worth her cost price, was she not?

"A. Practically—yes.

"270. Now, the steamship Creole, she was turned over to you in June, 1907?

"A. Yes.

"271. What per cent of her was finished on September 1, 1906?

"A. Well, that is a pretty hard thing to say, because she was an experimental ship; she was delivered to us in 1907 and supposed to have been, at that time, ninety per cent completed; she made a trial run, which proved to be an absolute failure, and she was turned back to the builders' hands to make good certain defects that existed. She was out of commission; she made one trip in July.

"272. 1907?

731 "A. 1907, one trip, went back to the builders, was there from the 9th of August until the 22d of December, and on the 28th of December of that year she made her second trip."

\* \* \* \* \*

"308. Now, the steamer Momus, the steamer Antilles, and the steamer Creole were all built for the Southern Pacific Company at Cramp's Ship Yard, near Philadelphia, weren't they?

"A. The Momus and Antilles were; the Creole was built by the Fore River Ship Building Company at Quincy, Massachusetts.

"309. And from the time that the keel is laid down, up to the time that the vessel takes her trial trip, she remains, of course, at the ship yard?

"A. She does.

"310. How long after the trial trip is it until she is delivered to the purchaser?

"A. Usually, if satisfactory, if she is considered satisfactory after inspection, she is delivered to the port, or according to what is named in the contract—

to any wharf that the owners may indicate, if so specified in the contract, as was in this case.

"311. Now, where were the Momus, Antilles, and the Creole to be delivered by the ship builders?

"A. To be delivered in New York at any place designated by the Southern Pacific Company or its representative, which was myself.

"312. Now, when was the Momus delivered to the Southern Pacific Company in New York?

"A. In November, 1906.

"313. By the Cramps?

"A. By the Cramps Ship Building Company.

"314. And the Antilles in May, 1907?

A. Yes.

"315. And the Creole in June, 1907?

732 "A. Yes, sir; I might add, as a matter of interest, to indicate that the builders are considered as owning the ship until she is actually delivered, they always fly their house flag, and not the owner's house flag, when they are making a delivery.

"316. Making their trial trip on the river?

"A. Yes; the owner's house flag don't go up until she is delivered; the builder's flag flies on the ship until she is delivered to the purchaser or owner. I want to call your attention to the fact that the builder's flag is hoisted on the ship until she is delivered to the purchaser, and his flag—the owner's flag—is not allowed to fly until she is accepted and delivered; the builders maintain the ship is theirs until accepted by the owner—purchaser.

"317. And, under your contract of purchase, what per cent of the purchase price has been paid?

"A. When she was brought to the dock?

"318. Yes.

"A. Eighty per cent. But when she was delivered to the dock the other ten per cent was called for on delivery."

We submit that it is impossible to presume a constructive situs of an unfinished ship. In this respect there seems to us no difference between a ship and any other article of manufacture. Suppose a railroad were to contract to have a bridge built. The bridge company

would make all the parts of the bridge and assemble them in its yard, ready for erection, before it would ship any part thereof. Surely the situs of this material would be its actual situs. It could not be said that every time the bridge company made a new beam this beam  
 733 would immediately fly through space and take even its taxable situs at the locality where it was designed ultimately to send it.

We submit, therefore, that what the court should do, in conformity with its opinion, is to direct the Southern Pacific Company to be assessed for ships, as of September 1, 1906, at \$4,828,180.41, and as of September 1, 1907, at \$7,682,344.42.

It will be noticed that these figures differ somewhat from the figures given in the petition for rehearing filed herein by counsel for the Commonwealth. We have called his attention to this difference, and we are authorized to say that he admits that our figures are correct. He did not contend in the Jefferson Circuit Court that the tugs and barges were taxable, and admitted that they should be deducted from the total amount. The only difference between counsel for the Commonwealth and for the Southern Pacific Company on the question is as to whether to the sum of \$4,828,180.41, as of September 1, 1906, should be added any part of the value of the Momus and Antilles. Counsel insists that 80 per cent of the value of the Momus and Antilles should be considered as of September 1, 1906—\$1,666,400, which, added to the \$4,828,180.41, would make a total of \$6,494,580.41, as of September 1, 1906. The only question, therefore, for the court to decide is whether, as of September 1, 1906, the amount should be the \$4,828,180.41 or \$6,494,  
 734 580.41. The amount as of September 1, 1907—\$7,682,344.42—is not disputed.

Respectfully submitted,

HUMPHREY, DAVIE & HUMPHREY,  
*Attorneys for Southern Pacific Company.*

Be it remembered that on the 20th day of  
 735 September, 1909, at a Court of Appeals held at  
 the Capitol, in Frankfort, the following order  
 was entered:

Commonwealth, by etc., vs. Southern Pacific Com-  
 pany, Jefferson.

Came appellant and on motion the petition filed in  
 the office of the Clerk of this Court during vacation is  
 noted of record, and moved the Court to grant a rehear-  
 ing herein, which motion is submitted.

Be it remembered that on the 20th day of  
 736 September, 1909, at a Court of Appeals held in the  
 Capitol, in Frankfort, the following order was  
 entered:

Commonwealth, by etc., vs. Southern Pacific Com-  
 pany, Jefferson.

Came appellee, and on motion the response to the  
 petition for rehearing filed in the office of the Clerk of  
 this Court during vacation is now noted of record.

Be it remembered that on the 1st day of  
 737 March, 1910, at a Court of Appeals held at the  
 Capitol, in Frankfort, the following order was  
 entered:

COMMONWEALTH OF KENTUCKY, BY &C. - - *Appellant,*

VS. CASE NO. 4. APPEAL FROM JEFFERSON  
 CIRCUIT COURT (CHY., 1 DIV.).

SOUTHERN PACIFIC COMPANY - - - - - *Appellee.*

---

The Court being advised it is ordered that the peti-  
 tion for re-hearing herein be overruled. The mandate  
 in this case is, however, extended so that it will read as  
 follows:

"The Court being advised it is considered that the judgment appealed from be and it is hereby reversed, with directions to the lower court to enter a judgment assessing the Southern Pacific Company on its steamships Chalmette, Excelsior, El Dorado, El Paso, El Monte, El Mar, El Sud, El Rio, El Cid, Comus, Proteus, El Valle, El Dia, El Siglo, Il Albra, El Amigo, having a situs in the Commonwealth of Kentucky, as of September 1, 1906, at a valuation of \$4,828,180.41; and the steamships above named, and in addition thereto the steamers Momus, Antilles and Creole, as of September 1, 1907, at \$7,682,344.42; and to enter a judgment based on these assessments, for the State and County, at the rates fixed by law; for the year 1907 at 50 cents for the

738 State and 32 cents for the County of Jefferson, each on the one hundred dollars; and for the year 1908, for the State at the rate of 50 cents, and for Jefferson County, at the rate of 26 cents, in each case on the one hundred dollars; and a penalty of 20 per cent on each amount; such penalty to be paid as set forth in the judgment of the Jefferson County Court rendered herein on November 18, 1908, at page 380 of the printed record.

"In all other respects the judgment of the lower court is affirmed."

This order is entered upon the agreement of counsel that the value of the property assessed is as above set out, the court being of opinion from the record that it is correct, and that a final judgment should now be entered.

Seen

M. J. HOLT, *Attorney for Appellant*,  
A. P. HUMPHREY, *Attorney for Appellee*.

739 Be it remembered that on the 2nd day of March, 1910, there was filed in the office of the Clerk of the Court of Appeals, an Assignment of Errors, and which is hereto attached and is as follows:

740 SUPREME COURT OF THE UNITED  
STATES.

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SOUTHERN PACIFIC COMPANY, - - - *Plaintiff in Error,*

*vs.* ASSIGNMENT OF ERROR.

COMMONWEALTH OF KENTUCKY on relation of  
George H. Alexander, Holland L. Anderson and  
J. W. Cassaday, Revenue Agents, *Defendant in Error.*

---

The plaintiff in error above named assigns the following error committed to its prejudice by the Court of Appeals of Kentucky in its judgment in cause lately pending in said court wherein the above named defendant in error was the appellant and said plaintiff in error was the appellee; viz.:

The said court erred in holding that the ships of the plaintiff in error were subject to taxation or assessment for taxation by the Commonwealth of Kentucky, or that they had a situs in Kentucky rendering them or any of them liable for taxation or assessment for taxation by the Commonwealth of Kentucky,

(1) Because in so doing the plaintiff in error is deprived of its property without due process of law, contrary to the provisions of the Constitution of the United States and especially to the Fourteenth Amendment thereof;

(2) Because said judgment of the Court of Appeals of Kentucky deprives the plaintiff in error of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States;

(3) Because said judgment of the Court of Appeals of Kentucky subjects to taxation within the territorial

limits of Kentucky tangible property located beyond the territorial limits of Kentucky and in this way violates the Constitution of the United States and particularly  
 741 the Fourteenth Amendment thereof.

MAXWELL EVARTS,  
 ALEX. P. HUMPHREY,  
*Attorneys for Plaintiff in Error.*

(Endorsed) Supreme Court of the United States.  
 Southern Pacific Company vs. Commonwealth of Kentucky, etc. Filed Mar. 2, 1910. Napier Adams, C. C. A.

And on said date there was filed in the office  
 742 of the Clerk of the Court of Appeals, a Writ of Error from the Supreme Court of the United States, an order allowing the writ and which is hereto attached, as follows:

743 THE UNITED STATES OF AMERICA, SS:

THE PRESIDENT OF THE UNITED STATES OF AMERICA TO THE HONORABLE JUDGES OF THE COURT OF APPEALS OF KENTUCKY; GREETING:

Because in the record of proceedings, as also in the rendition of the judgment, of a plea which is in the said Court of Appeals of Kentucky, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Southern Pacific Company, Plaintiff in Error, and The Commonwealth of Kentucky on relation of George H. Alexander, Holland L. Anderson and J. W. Cassidy, Revenue Agents, Defendants in Error, wherein was drawn in question in validity of a statute of, or an authority exercised under, said Commonwealth of Kentucky on the ground of their being repugnant to the Con-

stitution of the United States, and the decision was in favor of such validity and manifest error hath happened, to the great damage of said Southern Pacific Company. Plaintiff in Error, as by their complaint appears we being willing that error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 1st day of April, 1910, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States,  
 744 this the 2d day of March, A. D. 1910, and of the Independence of the United States of America the 134th year.

(Seal 6th Circuit Court, Eastern Ky. Dis., U. S. of America.)

CHAS. N. WIARD,  
*Clerk of the United States Circuit Court,  
 Eastern District of Kentucky,  
 At Frankfort.*

Allowed by

T. J. NUNN,  
*Chief Justice of the Court of Appeals  
 of Kentucky.*

(Endorsed) Filed Mar. 2, 1910. Napier Adams,  
 C. C. A.

And on said date there was filed in the office of  
 745 the Clerk of the Court of Appeals, a Writ of Error  
 Bond, and which is in the words and figures as  
 follows:

746 COURT OF APPEALS OF KENTUCKY.

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SOUTHERN PACIFIC COMPANY, - - *Plaintiff in Error,*

*vs.*

BOND.

COMMONWEALTH OF KENTUCKY, on  
 relation of George H. Alexander,  
 Holland L. Anderson, and J. W.  
 Cassidy, Revenue Agents, - *Defendant in Error.*

---

KNOW ALL MEN BY THESE PRESENTS; That  
 we, The Southern Pacific Company, as principal, and The  
 United States Fidelity & Guaranty Company, as surety  
 are held and firmly bound unto the Commonwealth of  
 Kentucky by, etc., in the sum of one hundred and thirty  
 thousand (\$130,000.00) dollars, for the payment of which  
 well and truly to be made, we the Southern Pacific Com-  
 pany, principal, and the said The United States Fidelity  
 & Guaranty Company, surety, bind ourselves jointly and  
 severally, firmly by these presents.

Witness our hands and seals this the 2d day of March,  
 1910.

The condition of this obligation is such, that, whereas  
 the said Commonwealth of Kentucky by, etc., instituted  
 a certain action against the Southern Pacific Company,  
 claiming a certain sum of money, and this complaint was  
 dismissed by the Jefferson Circuit Court, Chancery  
 branch, first division, and subsequently an appeal was  
 taken from said judgment to the Court of Appeals of

Kentucky, which reversed the same; and, whereas, the said Southern Pacific Company has sued out a writ of Error from the Supreme Court of the United States to reverse said judgment of the Court of Appeals of Kentucky,

NOW, THEREFORE, if the above bounden  
 747 Southern Pacific Co., shall prosecute said writ of error to effect and answer the judgment, all damage and costs if it fail to make good this appeal, then this obligation shall be void, otherwise to remain in full force and effect.

SOUTHERN PACIFIC COMPANY,

*By ALEX. P. HUMPHREY, JR., Attorney.*

THE UNITED STATES FIDELITY & GUARANTY CO.,

*By THOMAS S. DUGAN, Attorney in fact.*

The above and foregoing bond is approved this March 2, 1910.

T. J. NUNN,

*Chief Justice Court of Appeals  
 of Kentucky.*

(Endorsed) Filed Mar. 2, 1910. Napier Adams,  
 C. C. A.

And on said date there was filed in the office  
 748 of the Clerk of the Court of Appeals, the original Citation, with proof of service endorsed thereon, and which is hereto attached as follows:

749 UNITED STATES OF AMERICA, SS.

TO COMMONWEALTH OF KENTUCKY by

George H. Alexander, Holland L. Anderson

and J. W. Cassidy, Revenue Agents, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington thirty (30) days after the date here-

of pursuant to a writ of error filed in the Clerk's Office of the Court of Appeals of Kentucky, wherein Southern Pacific Company is Plaintiff in Error and you are Defendant in Error, to show cause, if any there be, why the judgment rendered against the Plaintiff in Error, as in the said Writ of Error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas J. Nunn, Chief Justice of the Court of Appeals of Kentucky, this 2d day of March, A. D. 1910.

T. J. NUNN,

*Chief Justice of the Court of Appeals  
of Kentucky.*

Citation accepted for the Commonwealth of Kentucky, Defendant in Error, this 1st day of March, 1910.

M. J. HOLT,

*Attorney for Defendant in Error.*

(Endorsed) Filed Mar. 2, 1910. Napier Adams, C. A.

COMMONWEALTH OF KENTUCKY.

750

ss.

THE COURT OF APPEALS.

In obedience to the commands of the within Writ of Error I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the case named in said Writ of Error, with all things concerning same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office. Done at the Capital in Frankfort, this 14th day of March, 1910.

(Seal Kentucky Court of Appeals.)

NAPIER ADAMS,

*Clerk Court of Appeals of Kentucky.*

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FILED.

OCT 10 1911

JAMES H. McKENNEY

CLERK

# Supreme Court of the United States

OCTOBER TERM, 1911.

No. 247.

SOUTHERN PACIFIC COMPANY, - - Plaintiff in Error,

versus

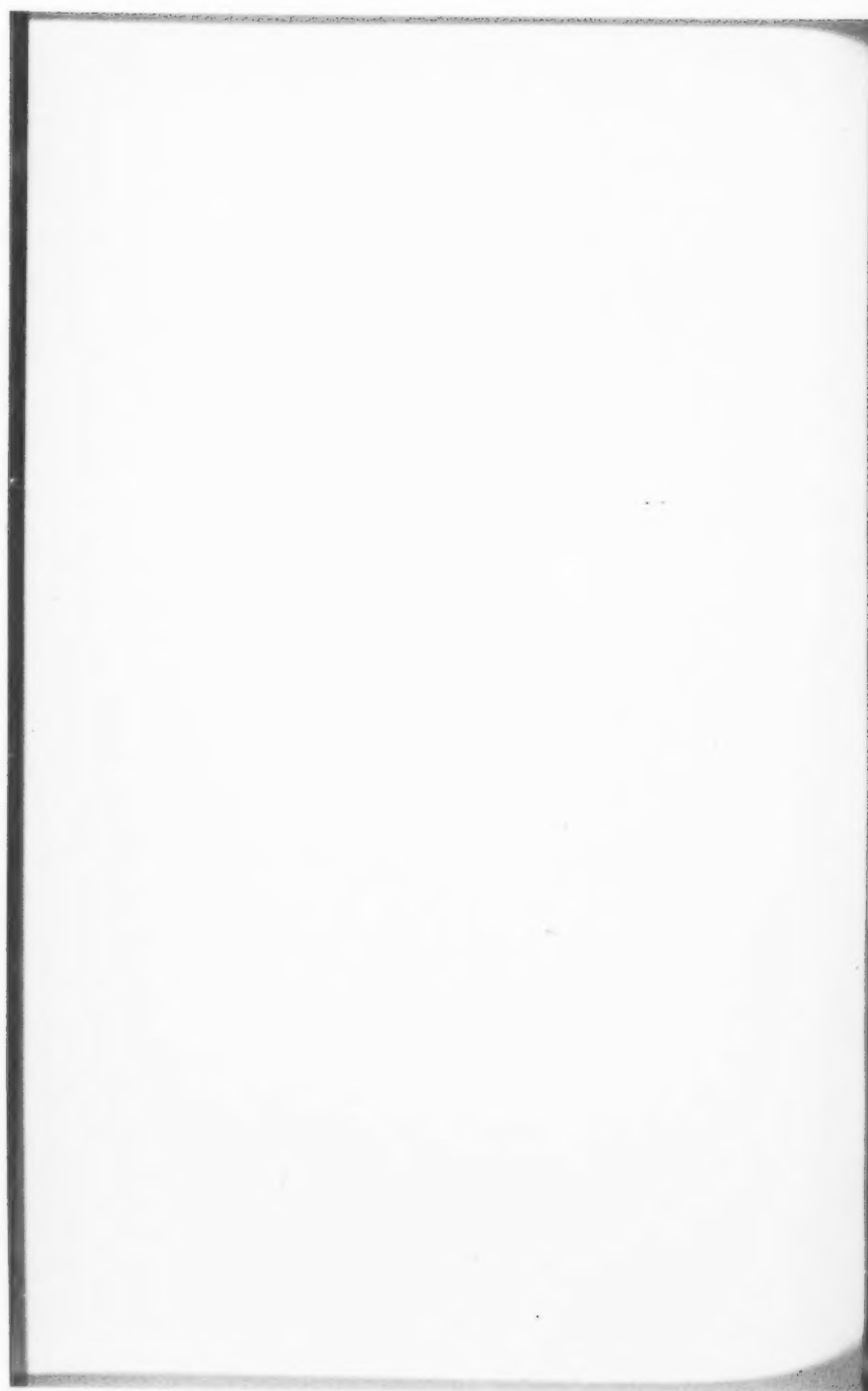
COMMONWEALTH OF KENTUCKY, ex rel  
GEORGE H. ALEXANDER, HOLLAND L.  
ANDERSON, and JOHN W. CASSEDAY,  
Revenue Agents, - - - Defendants in Error.

## BRIEF FOR DEFENDANTS IN ERROR.

MATT J. HOLT,  
Of Counsel.

JOSEPH SELLIGMAN,  
County Attorney.

MATT J. HOLT,  
Counsel for Defendants in Error.



# In the Supreme Court of the United States.

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SOUTHERN PACIFIC COMPANY, - - - *Plaintiff in Error,*

*vs.*

COMMONWEALTH OF KENTUCKY, EX REL.,

GEO. H. ALEXANDER, HOLLAND L.

ANDERSON, AND JOHN W. CASSADAY,

REVENUE AGENTS, - - - - *Defendants in Error.*

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BRIEF FOR COMMONWELTH OF KENTUCKY,  
DEFENDANT IN ERROR.

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## STATEMENT.

The record presents the following questions for  
determination:

### FIRST.

Does the fact that the Southern Pacific Company operates a line of steamships, controls by stock ownership the policy of 9,459 miles of railroad and gives as a common carrier a bill of lading from New York to San Francisco so modify the general tax law as to give to its intangible and steamship property a taxation situs different from that it would have as the property of a natural person, *i. e.*, at the residence of the owner?

## SECOND.

Do its franchises "*to do*" granted by other States and exercised wholly in other States exempt it from taxation as a natural person or place it among that class of persons assessed for a franchise tax by the State Board of Valuation and Assessment?

## THIRD.

Can the State Board of Valuation and Assessment constitutionally assess the property of The Southern Pacific Company under Sec. 5, Art. IV, Chapter 22, page 130, of the Acts of 1906?

## FOURTH.

Assuming that the State Board has constitutional jurisdiction to assess, is the action of that board (where it makes an assesment in utter disregard of the statute as to the manner of assessment and utterly disregards the provision of the Constitution that all property shall be assessed at its fair cash value) conclusive.

## FIFTH.

Is the taxable situs of *ocean going steamships* plying between New York and New Orleans, New York and Galveston and New Orleans and Havana at the owner's domicile or at the port of enrollment registration or license?

## SIXTH.

Will this court consider the right of Kentucky to tax property other than the Steamships of the Southern Pacific Company, the State court (in effect) having decided the other property was not omitted from taxation?

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This appeal involves the State's power to assess as omitted property the stocks, bonds, choses in action, and steamships of the Southern Pacific Company for the years 1907 and 1908, under Section 4241, of the Kentucky Statutes.

The Acts of 1906, attempt to establish a special law of assessment of intangible property for the Southern Pacific and similar companies not previously on the statute books by amending Section 4081 of the Kentucky Statutes so that it now reads (indicating the amendment by capitals):

(Sec. 4081.) "If the corporation organized under the laws of this State, or of some other State government, be a railroad, telegraph, telephone, express, sleeping, dining, palace or chair car company or a corporation performing any other public service the lines of which extend beyond the limits of the State, the said board will fix the value of the capital stock as hereinbefore provided, and that proportion of the value of the capital stock which the length of the lines operated, owned, leased, or controlled IN THIS STATE, bears to the total length of the lines owned, leased or controlled in this State or elsewhere, shall be considered in fixing the value of the corporate franchise of such corpora-

tion liable for taxation in this State; and such corporate franchise shall be liable to taxation in each county, incorporated city, town or district through or into which such lines pass, or are operated, in the same proportion that the length of the line in such county, city, town or district bears to the whole length of lines in this State; BUT IF ANY SUCH RAILROAD OR OTHER CORPORATION ORGANIZED UNDER THE LAWS OF THIS STATE HAVE ALL OF ITS LINES OUTSIDE OF THIS STATE, THE SAID BOARD SHALL FIX THE VALUE OF ITS ENTIRE CAPITAL STOCK AS HEREINBEFORE PROVIDED, AND APPORTION TO THIS STATE FOR TAXATION THEREIN THE PROPER PROPORTION AND NOT LESS THAN ONE PER CENT OF ITS SAID CAPITAL STOCK, AND THE AMOUNT SO APPORTIONED SHALL BE THE VALUE OF ITS INTANGIBLE PROPERTY, INCLUDING ITS CORPORATE FRANCHISE, STOCKS, BONDS, SECURITIES AND CHOSES IN ACTION, SUBJECT TO TAXATION IN THIS STATE AND IN THE COUNTY, CITY, TOWN AND DISTRICT WHERE ITS PRINCIPAL PLACE OF BUSINESS IN THIS STATE MAY BE LOCATED."

(DOMICIL.) The Southern Pacific Company is a Kentucky corporation, incorporated in 1884, with its principal office and place of business in Beechmont, Jefferson County, Kentucky, Section 8 of its Articles (Record, p. 367) providing:

(8) "The company SHALL KEEP an OFFICE for the TRANSACTION of BUSINESS, and the clerk or assistant clerk of said corporation shall reside within the State of Kentucky, but the said corporation may keep offices at such places outside

of the State as in the judgment of its board of directors its business may from time to time require."

It declares by affidavit in its reports or schedules, filed under the taxing laws of other States, for the purpose of evading in those States the assessment of any portion of its intangible property, that its principal office and place of business is Beechmont, Jefferson, County, Kentucky. (Record, p. 92.)

It came to this State, took out its naturalization papers, and became a citizen to procure some special privileges, or to be granted some immunity or exemption not otherwise procurable.

When it voluntarily became the State's citizen, having no idea at any time of owning or operating a railroad in this State (Charter, Sec. 1, p. 365, Record), it irrevocably fixed the taxable situs of its intangible property, its ocean-going steamships which could have no actual situs in any State, and such of its tangible property (if any) as was not in use and permanently located in another State. (See *Union Refrigerator Transit Company v. Kentucky*, 199 U. S. 4 B. M. 443; *Bank of United States v. Huth*; *Buck v. Beach*, 206 U. S.)

If dissatisfied with the incident effects of its voluntarily-adopted patronage, its remedy is an appeal to the Legislature, or else seek another sovereignty. It might adopt as its mother that buxom, full-breasted mother of tramp corporations, the State of New Jersey, where, with other tax-dodgers, it may rest in peace and live happily ever after.

(THE SOUTHERN PACIFIC COMPANY'S BUSINESS.) Its charter, granted in 1884 (p. 364 of the Record), gave it the privilege to do anything, except to operate a lottery and a bank (Sec. 8, p. 368) and "own or operate any railroad within the State of Kentucky." The charter was amended on March 21, 1888, so that the clause of limitation, reading, "that said coporation shall not have power to make joint stock with, lease, own, or operate any railroad within the State of Kentucky," was amended to read, "except subject to and in conformity with the provisions of the laws of the State of Kentucky applicable to railroads and acquiring no special rights that may be possessed by any railroads in the State, except the general and ordinary rights of common carriers, as possessed by railroads generally."

The Southern Pacific Company has never owned, operated, nor controlled any railroad or railroad property in this State. It has always remained as originally incorporated, "a tramp corporation" organized in a State and operating under a charter which originally expressly denied to it the power to own or operate a railroad in the State. (Record, p. 365.)

It necessarily follows, that so far as this State is concerned the Southern Pacific Company is not a RAILROAD, but a HOLDING COMPANY.

The reports made to this State show these facts (Record, pp. 339-351), and also that its business is as expressly declared by the company (Record, p. 92), "of unifying in management of lines of railroad extending from New Orleans, La., to San Francisco, Cal., to Port-

land, Ore., and Ogden, Utah." Again in its reports for the years 1907 and 1908 (pp. 340-352), to the State Board it declares that the business of the company is "the operating of associated lines."

The deposition of Mr. Mahl, comptroller of the company, upon this issue (Record, p. 457) is as follows:

"60. Q. Each of these roads are controlled by a Board of Directors independently, or different from the Board of Directors of the Southern Pacific Co., are they not?

A. That is a matter of record.

Q. And each of said companies is a different corporation from that of the Southern Pacific Co., is it not?

A. It is.

62. Q. Each of the lines of railroad operated by the Southern Pacific Co., under lease also have a separate Board of Directors from that of the Southern Pacific Co., do they not?

A. They have.

63. Q. Then each of the leased lines of railroad is a separate and distinct corporation from the Southern Pacific Co., is it not?

A. It is.

64. Q. Does the Southern Pacific Co., own any line of railroad independent of any other company?

A. Not that I know of.

1. Q. (p. 476.) Mr. Mahl, in the lines operated under their own organizations, and which are embraced in what you term the 'Transportation line,' and in which the Southern Pacific Co., owns a controlling interest in said roads, I will ask you to now state whether or not the Southern Pacific Co., purchased a majority of said stock at one time, or at different intervals of time?

A. With the exception of possibly some very

small amounts, it was acquired all at one time, by exchange for its own stock."

The "unified" or "associated lines" of this holding company are divided into three classes. (Record, p. 457, questions 60 to 64; p. 476, question 1; exhibit 3, p. 482; pp. 357, 358.)

First. Companies whose capital stock is principally owned by the Southern Pacific Company:

	Miles, Main Track.
Southern Pacific Railroad (1,600,000 shares)-----	3,332.26
Central Pacific Railway (67,755 shares)-----	1,452.07
Oregon & California Railroad (----- shares)-----	665.04
Morgan, Louisiana & Texas R. R. (150,000 shares)-----	338.74
Iberia & Vermillion, owned by M. L. & T. R. R.-----	15.64
Louisiana Western R. R. (33,600 shares)-----	197.27
Texas & New Orleans R. R. (49,996 shares)-----	441.34
Galveston & San Ant. R. R. (270,556 shares)-----	1,316.73
Houston, East & West Texas R. R. (19,162 shares)-----	190.94
Houston & Shreveport R. R. (3,976 shares)-----	39.78
Houston & Texas Central R. R. (99,983 shares)-----	694.78
Nevada & California R. R. (4,570 shares)-----	314.88
SOUTHERN PACIFIC COMPANY-----	9.41
Total miles -----	9,108.64

It leases:

New Mexico & Arizona R. R.-----	88.10
Sonora R. R.-----	262.60
Total leased -----	350.70

Total mileage of system main track 9,459.34 miles, of which it actually owns but 9.41 miles. Controls by stock ownership 9,099.23 and leases 350.70 miles—yet it is contended that this system is not a holding company. It does, however, own outright the steamships assessed in this proceeding.

(PROPERTY INVOLVED AND ITS VALUE.) A stipulation found on page 206 of the record, fixes the value of the intangible property and steamships of the company for the tax years as follows:

1907 Steamships .....	\$ 5,111,572.00
1907 Stocks and Bonds.....	144,559,259.77
1908 Steamships .....	8,115,643.00
1908 Stocks and Bonds.....	157,758,419.13

This is the property which it is alleged should have been assessed under Sec. 4241 of the Kentucky Statutes as omitted from assessment.

The agreed valuation for the year 1907, after deducting \$233,500.00 for tugs and barges in New York and Galveston harbors, which remained in harbor:

Intangible property, stock, bonds and choses in action....	\$144,559,259.77
Steamships .....	4,878,072.00
Total for the year 1907.....	\$149,437,331.77

The agreed valuation for the year 1908, after deducting \$391,454.00 for tugs and barges in New York and Galveston harbors:

Intangible property, stocks, bonds and choses in action....	\$157,758,419.13
Steamships .....	7,724,189.00
Total for the year 1908.....	\$165,482,608.13

Report of June 30, 1906, to Auditor (p. 339, Record) shows:

Par value of stock.....	\$388,460,390.00
Face value of bonds.....	18,634,000.00
Total .....	\$407,094,390.00

Report of June 30, 1907, to the Auditor (p. 359), shows:

Par value of stock.....	\$369,854,000.00
Face value of bonds.....	39,376,300.00
Total .....	\$409,230,300.00

Other intangible property was set out in these reports besides the stocks and bonds, yet the only assessment of property made against the company by the State Board was the franchise at \$2,374,189.00 for each year, which was one per cent of the par value of the stock, preferred and common, issued by the company.

(INTANGIBLE PROPERTY AND STEAMSHIPS, NOT ELSEWHERE ASSESSED.) The Southern Pacific Company, at least so far as this State is concerned, is not a railroad but a HOLDING Company. It exercises in this State no privileges not allowed by law to natural persons. It exercises no franchise "TO DO" and that is the franchise taxed under Sec. 4077, *et seq.*, of the Kentucky Statutes. It has from this State its franchise, "TO BE." That franchise as said by the Kentucky courts is not property; it is not a subject of taxation. (Com. v. Lednan, 32 K. L. R. 457.)

That franchise, however, fixes the domicile of the company. The domicile fixes the taxable situs of its intangible property and its steamships. The company operates a line of steamships from New York to New Orleans, New York to Galveston and New Orleans to Havana.

The stocks, bonds and steamships of the company are

neither listed by it nor taxed by any other jurisdiction for the reason that both the company and the other States recognize that the taxable situs of this property is in Kentucky.

It is not only disclosed by proof but admitted by stipulation that none of the property sought to be assessed in this proceeding for State and county purposes is elsewhere assessed or taxed.

The stipulation as to non-payment of taxes is found on pages 81 and 82 of the record and in part is as follows:

“First. The Southern Pacific Company has not made a report to the State Board of Tax Commissioners of the State of New York, nor to any other board or officers of said State charged with the duty of fixing the value of property for the purpose of assessment for taxation for any one or more of the years involved in this litigation; nor has said Southern Pacific Company been assessed, nor has it paid any taxes to the said State of New York for any or all of the years in question in this litigation.

Mr. Mahl, the comptroller, in his deposition as to taxes, pp. 458 and 459, says:

“73. Q. Does the Southern Pacific Co., make annual report to the Secretary of the State of New York for assessment of its property, and if so, what does it report as its principal office?

A. It does not make any annual report.

74. Q. Does it report to any board of assessment for the assessment of its property in the State of New York?

A. It does not.”

Again in his deposition on pages 473 and 475, speaking of the steamships:

"146. Q. You may state whether or not the Southern Pacific Company has listed its steamships and barges, set out in the exhibit filed heretofore, with this deposition, for any or all of the years embraced in this litigation, anywhere other than the Commonwealth of Kentucky?

A. It has not.

147. Q. Has the Southern Pacific Co., paid taxes on said ships, barges, and tugs anywhere, unless it be in the Commonwealth of Kentucky, for any of the years involved in this litigation?

A. It has not.

153. Q. Does the Southern Pacific Company list its boats, ships, and tugs for taxation, and pay the same to either the city or State of New York?

A. It does not."

This record discloses the appellee to be an habitual tax-dodger, as does the case of California v. Pacific Railroad Company, 127 U. S. 27, which involves the following assessments:

THE CENTRAL PACIFIC R. R. CO.

Tax Year.	Valuation.	Tax.
1883	\$18,000,000.00	\$276,865.00
1884	24,000,000.00	(not given)

SOUTHERN PACIFIC R. R. CO.

1883	(not given)	(not given)
------	-------------	-------------

The Southern Pacific Company now owns, as a holding company, the capital stock of each of these roads and controls their policies.

The date of the assessment involved is significant in that the company was organized under its Kentucky charter in 1884, and took over for operation these roads, by an assignment of their capital stock on March 1, 1885.

### **ARGUMENT.**

The State of Kentucky made its first assessment of property of the Southern Pacific Company in 1892. This was upon its franchise, and the valuation placed thereon was \$1,000,000. At the time Judge Humphrey protested most strenuously against such assessment, raising the same constitutional objections in his correspondence as are raised by counsel for defendant in error.

The report of June 30, 1906, to the Auditor (p. 339 Record) shows, that the company was the owner of assessable stocks and bonds of the par value of \$407,094,-390.00 and on June 30, 1907 of the par value of \$409,-230,300.00.

The 1907 and 1908 assessment of this property by the State Board of Valuation and Assessment (including it with the franchise under the Act of 1906 heretofore quoted) was \$2,374,189.00 for each year. This being one per cent of the *par* value of the stock preferred and common issued by the company. This insignificantly arbitrary assessment, supposed to include the above property, was the only assessment made by the State Board against this \$400,000,000.00 holding company.

If assessed under the general tax law as a citizen of this State upon its steamship and intangible property,

there is no violation of any constitutional provision and no infringement of any regulation of interstate commerce. If assessed by the State Board under the Act of 1906, both objections are valid and sufficient. Were this property assessed at its fair cash value by the Board, the company would, with the greatest vigor, and most strenuous protest, assail Section 5 of the Acts of 1906, as being unconstitutional, invoking the protection of the Fourteenth Amendment.

Counsel for defendant in error confesses this State has no jurisdictional right to assess any tangible property permanently located in another State. Kentucky makes no effort to have assessed any tangible property except the company's steamships. They are ocean-going vessels; are treated in law as intangible property, and follow the domicile of the owner. They have no permanent situs. It is incidental for them to be in port.

It is a well established rule in Kentucky, based upon our Constitution, Sec. 172, the Kentucky Statutes, Sec. 4020, and judicial construction of those sections that the intangible property of CITIZENS OF THIS STATE IS SUBJECT TO TAXATION BY THIS STATE and shall be taxed at its fair cash value.

This construction and these sections violate no provision of the Federal Constitution when they fix without qualification the situs of such property.

It is contended, however, by the company that its intangible property has a taxable situs elsewhere because it is in use elsewhere. It is true as to tangible property that the Supreme Court of the United States

has said that it can not be taxed by this State if permanently located in, and in use in another State (Union Refrigerator Transit Co. case, 199 U. S.). But no court has ever said that this or any other State can not tax the intangible property of its citizens.

In the Union Refrigerator Transit Company case it is said:

“The argument in favor of the taxation of intangible property at the domicile of the owner have no application to tangible property \* \* \* This rule (*mobilia sequuntur personam*) is, doubtless, true as to intangible property such as bonds, mortgages, and other evidences of debt. But the better opinion seems to be that it does not hold in the case of visible tangible personal property permanently located in another State.”

It is true intangible property in use in another State as money loaned and reloaned, may be taxed by that State although the owner may reside elsewhere (*Buck v. Beach*, 206 U. S.; *Commonwealth v. R. G. Dun & Co.*, 31 K. L. R. 561), but there is no decision that the State can not tax its own citizen on his intangible property, even though the loans are in other States or the investment is secured by property in another State.

The fact that property is taxed in another State, however does not exempt it from assessment at the owner's domicile. That is not twice taxing a thing. To constitute double taxation it must be twice taxed in the same jurisdiction.

The mere fact that these stocks and bonds of appellee were sometimes kept in New York, sometimes in New

Jersey, and sometimes in California (pp. 472-473) shows their transient and intangible character; indicates a cause why they were never assessed by either State, and why they should be at the owner's domicile.

Even if they had been or were subject to assessment in either State, the taxation by both jurisdictions, or the right to tax by both jurisdictions, violates no provision of the Constitution, nor is it double taxation. Each jurisdiction is sovereign and independent in this respect, and one sovereign can not exempt property from taxation in another sovereignty.

This court has established the right to tax tangible property which has acquired a different situs from that of its owner at the jurisdiction of its situs. After this principle had been established, the court went further and decided that tangible personal property permanently located and in use in a jurisdiction foreign to the domicile of the owner could not be taxed at the owner's domicile.

This court has gone so far as to give intangible property in use in a foreign State, in the same manner that similar property is so used in that State, a taxable situs in that State, but no decision of the Supreme Court has yet gone so far as to declare that the mere fact that intangible property is taxed in a foreign jurisdiction takes from the jurisdiction of the domicile of the owner the power to tax the same property.

The conclusion to be drawn and the law applicable to the proposition is aptly expressed in the case of *Coe v. Errol*, 116 U. S. 524, therein it is said:

"If the owner of personal property within a State resides in another State which taxes him for that property as part of his general estate attached to his person, this action of the latter State does not in the least effect the right of the State in which the property is situated to tax it also. It is hardly necessary to cite authorities on a point so elementary."

Our own Constitution (Sections 172-174) and statute, Section 4020, regulate or fix the situs of this property for taxation; the taxing power of the State is one of its attributes of sovereignty (18 Wallace 5), and no question is more clearly a matter of local law than one arising under its tax laws (Lewis v. Monson, 151 U. S. 549).

The Southern Pacific contends it is not a holding company, but a railroad company. The Commonwealth did not seek to tax its roadbed, its rolling stock or its real estate, but the property it owns as a holding company.

APPELLEE IS NOT A PUBLIC UTILITY CORPORATION WITHIN THE MEANING OF SECTION 4077, *et seq.*, OF THE KENTUCKY STATUTES, SO AS TO SUBJECT IT TO LIABILITY FOR A FRANCHISE TAX OR ASSESSMENT BY THE STATE BOARD OF VALUATION AND ASSESSMENT. IT SHOULD BE ASSESSED UNDER THE GENERAL LAW AS A CITIZEN OF THIS STATE.

Every corporation has two franchises, the right "to be" and the right "to do." A public utility corporation has in addition the right "to do something not allowed by law to natural persons."

The right to be, and the right to do what a natural person can do, is not property and can not be assessed and taxed. Yet such rights establish domicile and fix the situs of property.

The right to do something not allowed by law to natural persons, is the right and the only thing that is taxed under Section 4077 of the Kentucky Statutes, although its assessment includes the intangible property of the person assessed but these FRANCHISES TO DO are exercised wholly in other States and are granted by other sovereigns. The State of Kentucky therefore can not tax them. (Jeffersonville Ferry Case, 188 U. S.) Besides the section expressly provides that this tax is payable to the State, county and taxing district "where its franchise may be exercised," and as no franchise to do a special privilege is exercised in Kentucky it follows that this State can not tax the privilege (James, Auditor, v. Kentucky Refining Co., 113 S. W. 469-470) nor the State Board assess the privilege nor tax the property of the company, and unless taxed under the general law, the company's steamships and intangible property escape taxation. In no event can the State Board assess the steamships.

The only jurisdiction that can assess the SPECIAL PRIVILEGE which the law seeks to assess under Section 4077, *et seq.*, is the jurisdiction where the franchise is exercised.

The Southern Pacific Company so far as this State is concerned performs no public service, and the authori-

ties are clear that this State can not assess for public service performed in other States.

It is true if it operated any railroad or performed any public service, or exercised any special privilege in the State, the State Board could assess it as a public service corporation, but since it performs none, it must be taxed by this State as a private citizen on its property, having a taxable situs in Kentucky.

Section 4077, *et seq.*, never contemplated the assessment of such a corporation as the Southern Pacific Company. A railroad doing business in this State and out of it is assessed by the Board in proportion to the mileage within the State and out of it. A public service corporation earning money in this State and out of it is assessed for franchise purposes in proportion to the earnings in this State and out of it. Again a corporation may be capitalized and its tangible property deducted from the "capital stock" which remainder is the value of its franchise. This company can be assessed in neither of these ways for the reason that so far as this State is concerned it is a holding company dealing in stocks and bonds and *paying a broker's license*. (Sec. 7 of its charter, p. 367.)

Such was the position taken by counsel for the company at all times until the State Revenue Agents sought the assessment of the company's property at a figure near its real value. Whereupon being better satisfied with the action of the State Board than the threatened action of the agents, they shifted their position, acknowledged by conduct that their letters (pages 172-182 of

the record) were buncombe, and readily adjusted themselves to a death grip of the other horn of the dilemma.

The State Board of Valuation and Assessment was created to assess the franchise of public service corporations exercising special privileges in this State. In the assessment of such franchises the value of the intangible property is included but it is only one kind of the property assessed, the other is the special privilege; if no special privilege is granted and EXERCISED in this State, the State Board can not assess.

In the case of *James, Auditor, v. Kentucky Refining Company*, 113 Southwestern, pages 469 and 470, it is said:

“The franchise spoken of by this statute is not the right to do the thing, but the doing of it. The State does not seek by this section to tax the right to do it. It fixes a value upon the privilege which has been enjoyed, and taxes that value as property of the person who has exercised the privilege. The right to be a corporation is one thing; the fact that the corporation actually engages in a certain business, or enjoys a privilege peculiar to such business is or may be quite a different thing. The legislative purpose was to classify certain kinds of employment, which upon an examination of the statute will be seen to have been all of a kindred nature—it was the serving of the public in some sense. \* \* \*

The Amendment of 1906 to Section 4081 is unconstitutional, because it is:

First, an assessment of a franchise to do, exercised within other States and not in this State. Such property is not subject to assessment by this State.

Second, it is an assessment on the gross receipts of steamships and railroads derived from the transportation of property by sea and between different States and foreign countries and is therefore unconstitutional and void. (*Philadelphia Steamship Company v. Pennsylvania*, 122 U. S. 338-340-342 and 344; *California v. Pacific R. R. Co.*, 127 U. S. 29-33-34-40-41; *Fargo v. Hart*, 193 U. S. 499; *Southern Building Co. v. Norman*, 98 Ky.)

Section 5 of the Act of 1906, under which the State Board assessment was made, is unconstitutional. That being the case it necessarily follows that the company not being subject to a franchise tax because it exercises no franchise in this State must be assessed under the general taxing law as a citizen of this State, or not at all.

The case of *Atlanta National Association v. Stewart*, 109 Ga. 91, and other cases hereinafter cited, expressly decided if an Act assessing property in one manner is unconstitutional and void the property does not escape taxation but is assessed under the general taxing system of the State; that is under Section 4020 and following of the Kentucky Statutes.

## VALUATION.

The State Board of Valuation and Assessment assessed the property of the company at one per cent of the *par value* of its stock under a special law utterly disregarding the constitutional provision that property shall be assessed at its fair cash value. Par value has nothing to do with the fair cash value.

It was decided by this court in the case of the Henderson Bridge Company v. Kentucky, <sup>144</sup> U. S., that a franchise tax under the Kentucky Statute was simply an intangible property tax. It has been repeatedly decided by the State Court that a franchise tax includes all intangible property. (*Commonwealth v. Cumberland Telephone Co.*, 30 K. L. R. 723.) Such being the law, how can a franchise assessment include intangible property if the conceded value of the intangible property is one hundred times the value placed upon the franchise?

Assuming that the Act is not unconstitutional, this valuation in itself is such a gross undervaluation as to render the assessment void. The report of the company shows its intangible property to be worth exceeding \$200,000,000.00. The figures were uncontradicted, they were the only evidence and were conclusive upon the board. Had you or I made such a report it would have been the assessor's duty to have assessed the property against us at \$200,000,000.00. The clause "the proper proportion and not less than one per cent of its capital stock" does not validify the assessment. (The case of *Henderson Bridge Co. v. Commonwealth*, 99 Ky. 641, defines "capital stock.")

Assuming the constitutionality of the statute the assessment was not made in the manner required by statute, "capital stock" was not considered and even if it was there was no right or reason in fixing it at one per cent. (*Revenue Agent v. Clarke*, 80 Miss. 150; *State v. Lawler*, 103 Wis. 465; *State v. Losby*, 115 Wis. 63.)

In the case of *Weyerhauser v. Minnesota*, 176 U. S. 557 and 558, it is said:

“The Legislature may authorize different modes of assessment for different properties, providing the rule of assessment is the same. \* \* \* We agree with the Supreme Court of the State that a gross undervaluation of property is within the principle applicable to an entire omission of property. If it were otherwise, the power and duty of the Legislature to impose taxes and to equalize their burdens would be defeated by the fraud of public officers, perhaps induced by the very property owners who afterwards claim its illegal advantages.

“If an officer omits to assess property or grossly undervalues it, he violates his duty, and the property and its owners, escape their just share of the public burdens. In *Stanley v. Supervisors of Albany*, 121 U. S. 535, we held that against an excessive valuation of property its owner had a remedy in equity to prevent the collection of the illegal excess. It would be very strange if the State, against a gross undervaluation of property, could not in the exercise of its sovereignty give itself a remedy for the illegal deficiency.”

The State Board of Valuation and Assessment can not assess the company; or if it can, the assessment is void, because of the gross undervaluation.

The taxable situs of defendant's intangible property is at Beechmont, Kentucky, as is also the taxable situs of its steamships. This intangible property is neither listed by the company nor taxed against it by any other jurisdiction; for the reason that both the company and the other States recognize that the taxable situs of this property is in Kentucky. (Record, pp. 81-82-458-581.)

The opinion of the Kentucky Court of Appeals is found on pages 639 to 642 inclusive of the record. No consideration was given by it to any question save the power of Kentucky to tax the ocean going steamships. The steamships without a dissent were held subject to assessment for taxation. The court dismissed all other issues with the sweeping declaration "We find no other error in the record."

Counsel for Plaintiff in Error contend that the only issue that can be considered on this appeal is the power of Kentucky to tax the steamships. We contend that this court can and should review all questions presented by this record.

**OCEAN GOING STEAMSHIPS ARE TAXABLE AT  
THE OWNER'S DOMICILE.**

The taxable situs of ocean-going steamships, plying between New York and New Orleans, New Orleans and Havana, and New York and Galveston, is at the domicile of their owner, and not at the port of enrollment. Their situs is fixed by the residence of the owner, because it is incidental to be in port.

The unanimous opinion of the Court of Appeals by Chief Justice Hobson is found beginning page 639 of the record. That portion relating to the assessment of the steamships is as follows:

"The ships are enrolled or licensed from the port of New York, and ply between New York and New Orleans or New York and Galveston. The question to be determined is are these steamships

taxable at the domicile of their owner at Beechmont in Jefferson County? They are tangible personal property and therefore should have been assessed by the assessor of Jefferson County if they are taxable there. The ships in fact have never been in Kentucky, and under ordinary circumstances can not come to Beechmont. Yet it is the domicile of their owner, and if they are taxable at the domicile of their owner they may be taxed in Jefferson County. In *Hays v. Pacific Mail Co.*, 17 How. 596, the Pacific Mail Company was incorporated by the laws of New York. Its principal place of business was in New York; all of the vessels were registered in New York, the residence of the owner. It was held that these ships although plying in the Pacific, acquired no situs in California; that their situs was at the home port, the domicile of the owner. In *St. Louis v. Wiggins Ferry Co.*, 11 Wall. 423, the boats were owned by an Illinois corporation and plied between a point in Missouri and a point in Illinois. It was held that they acquired no situs in the City of St. Louis; but that their situs was at the domicile of the owner, and that they were taxable in Illinois. In *Morgan v. Parham*, 16 Wall. 471, the owner of the ship had his domicile in New York, and the vessel was registered at the port of New York, but plied between the ports of New Orleans and Mobile. The court held that the vessel had no situs outside of the domicile of the owner and was assessable at New York, where he resided although in fact *it never came there*. In *Ayer & Lord Tie Company v. Kentucky*, 202 U. S. 409, the owner of the boats had its domicile at Chicago. The boats plied in the Ohio and Tennessee Rivers. They *could not go to Chicago*, and they were enrolled at Paducah as their home port. This court held that the owner in enrolling them at Paducah as their home port had given them a situs in Kentucky, and that they were therefore taxable in Kentucky. (See Ayer and Lord

Tie Company v. Com., 117 Ky. 161.) But on appeal to the United States Supreme Court the judgment was reversed and it was held that these boats were taxable at the domicile of the owner. The court reviewed its previous opinions and thus stated the rule which it deduced from them:

“ ‘The general rule has long been settled as to vessels plying between the ports of different States, engaged in the coastwise trade, that the domicile of the owner is the situs of a vessel for the purpose of taxation, wholly irrespective of the place of enrollment, subject, however, to the exception that where a vessel engaged in interstate commerce has acquired an actual situs in a State other than the place of the domicile of the owner, it may there be taxed because within the jurisdiction of the taxing authority.’ ”

“The case of *Old Dominion Steamship Company v. Virginia*, 198 U. S. 299, illustrates the exception referred to. In that case although the domicile of the owner was in New York, the vessels were navigated wholly within the limits of the State of Virginia, and it was held that these vessels had thus acquired a situs in Virginia. But the vessels in controversy here have no situs in New York or New Orleans. They ply in coastwise trade. They *have not been taxed and can not be taxed either in New York, in Louisiana or in Texas*; for they acquire no situs in these States simply by landing to put off or take on a cargo or by remaining in port a few days, for this or other temporary purpose. If they are not taxable in Kentucky *they are not taxable anywhere*. Their owner is a citizen of Kentucky. It derives not only its existence, but all its powers from the laws of Kentucky. The ships carry the American flag and enjoy the protection of the laws of the United States, by reason of the fact that their owner is a citizen of Kentucky. Being thus protected by the United States, and their owner

enjoying all the privileges which its citizenship in Kentucky confers these ships should bear their just proportion of the public burden of taxation.

"We therefore conclude that the County Court properly assessed them for taxation, and that the Circuit Court erred in holding otherwise. We find no other error in the record."

The very character of an ocean-going steamer, incidentally in port, most of the time sailing the high sea; its lack of a fixed situs, as much in port at New Orleans, or Havana or Galveston as New York; its transitory character and use; takes it without the rule of law governing tangible property having a fixed location and a situs following its physical presence and more justly and reasonably applies to it the rule of law governing intangible property the taxable situs of which is fixed by the domicile of the owner.

The case of *Ayer & Lord Tie Company v. Commonwealth*, 202 U. S. 421 to 424, reversing 25 K. L. R. 1068, seems conclusive.

In that case the steamboats were enrolled at Paducah, which was their home port; they had painted the words "of Paducah, Ky.," on the stern of each boat. The boats ran principally in Kentucky waters. They *had never been*, and *it was impossible* for them to get to the residence of the owner.

The opinion of the United States Supreme Court quotes in part the opinion of the Court of Appeals as follows:

"The steamboats involved in this litigation are separated from the residence of their owners by a

long distance in both geography and time; in fact, they *can never visit the port* at which their owner resides; they are, so far as their actual situs is concerned, permanently confined to the rivers over which they float. If their home port had to be Chicago, because that is the residence of their owner, as under the law prior to 1884, then they would have a home port from which they could derive no advantage or protection, because they could never reach it. It was to obviate this hardship with others, that the Act of 1884 was passed by Congress, permitting their owners to select for them a home port in the field of their operations, which is for them a home port in fact, as well as in law and in name. Property, such as that under consideration, ought, logically, to be taxed at its own home port. There it can be seen and properly valued for assessment, by the fiscal officers, whereas, at the residence of its owner (Chicago), the officers of necessity must rely on the statements of the latter for both its existence and its value. At its home port it enjoys the protection of the laws of the jurisdiction in which it is located, and both justice and reason would seem to require that property thus permanently located, both in legal contemplation and in fact, within a jurisdiction foreign to that of its owner, should contribute its fair share to the support of that government whose protection it enjoys."

This court commenting, says:

"It is at once apparent that this line of reasoning, whilst it asserts the principle of ACTUAL SITUS and expounds the Act of 1884, as making that the exclusive rule to test the power to tax, at once causes the act to destroy the very principle which it was assumed the act upheld. This is the inevitable consequence of the conclusion reached by the court below that the Act of 1884 endowed the

owner of a vessel with the power, simply by painting the name of a place upon his vessel, to make such place the situs for taxation, although it might be neither the ACTUAL SITUS of the property nor the RESIDENCE of the owner."

In the same opinion, pages 421, 422 and 432, it is said:

"The general rule has long been settled as to vessels plying between the ports of different States, engaged in the coastwise trade, that the domicile of the owner is the situs of a vessel for the purpose of taxation wholly irrespective of the place of enrollment, subject, however, to the exception that where a vessel engaged in interstate commerce has acquired an actual situs in a State other than the place of the domicile of the owner, it may there be taxed, because within the jurisdiction of the taxing authority.

"In *Hays v. Pacific Mail S. S. Co.*, 17 How. 596, vessels were registered in New York, where the owner resided. The vessels were employed in commerce in the Pacific Ocean between San Francisco and Panama, and the question was whether the vessels were subject to taxation in California. It was decided that they were not, as they had not become incorporated into the property of California so as to have an actual situs in that State, and it was declared that the vessels were properly taxable at the domicile of their owner.

"In *St. Louis v. Ferry Co.*, 11 Wall. 423, the boats of the company, an Illinois corporation, were enrolled at St. Louis and plied between that city and the city of East St. Louis in the State of Illinois. The company had an office in St. Louis, where its president and other principal officers lived, and where the ordinary business meetings of the directors were held and the corporate seal was kept. A tax was paid upon the boats in Illinois, the resi-

dence of the owner. The city of St. Louis taxed the ferry boats as personal property 'within the city.' It was, however, held that the boats did not so abide within the city as to become incorporated with and form part of its personal property, citing *Hays v. Pacific Mail S. S. Co.*, 17 How. 559. In the course of the opinion the court said:

"The boats were enrolled at the city of St. Louis, but that throws no light upon the subject of our inquiry. The Act of 1789, Sec. 2, 1 Stat. at L. 55, and the Act of 1892, Sec. 3, 1 Stat. at L. 287, require every vessel to be registered in the district to which she belongs, and the fourth section of the former act and the third section of the latter declare that her home port shall be that at or near which her owner resides. The solution of the question, where her home port is, when it arises, depends wholly upon the locality of her owner's residence, and not upon the place of her enrollment. 3 Kent. Com. 133, 170; *Hill v. The Golden Gate*, Newberry, 308; *The superior*, Newberry, 181; *Jordan v. Young*, 37 Maine, 27, 29.'

"In *Morgan v. Parham*, 16 Wall. 471, a vessel originally registered in New York had been engaged for years in the coastwise trade between Mobile and New Orleans and was enrolled at Mobile. It was decided that the boat could not be taxed in Alabama.

"In *Transportation Co. v. Wheeling*, 99 U. S. 273, vessels engaged in commerce between ports of different States were held taxable at the domicile of the owner.

"Quite recently, in *Old Dominion S. S. Co. v. Virginia*, 198 U. S. 299, the foregoing authorities were approvingly cited and were, in effect, re-affirmed. In that case the vessels were enrolled in New York, the domicile of the owner, but, although engaged in interstate commerce, the vessels were navigated WHOLLY WITHIN the limits of the State of Virginia. It was held that they came within

the exception to the general rule which we have previously stated, and were properly taxable in Virginia.

"As, in the case at bar, the owner of the vessel was domiciled in Illinois and the vessels were not employed exclusively in commerce between points in the State of Kentucky, but were engaged in traffic between that State and the ports of other States, including Illinois, it seems obvious that, as a question of fact, they had no permanent situs in the State of Kentucky, within the rule announced in the Old Dominion Steamship case. The right, then of the State of Kentucky to tax the vessels must solely depend upon the fact that they were enrolled at the port of Paducah, in that State. But if the enrollment at that place was within the Statutes, it is wholly immaterial, since the previous decisions to which we have referred decisively establish that enrollment is irrelevant to the question of taxation, because the power of taxation of vessels depends *either upon the actual domicile of the owner or the permanent situs of the property within the taxing jurisdiction.*"

If this court should hold these steamships not taxable, Kentucky loses both sides of the same issue, in *this court*.

I am unable to understand how the Delaware, Lackawanna & Western case can be in point. It merely decided that coal shipped to the State of New York for sale, definitely and forever beyond the jurisdiction of Pennsylvania, could not be considered in assessing the capital stock of the railroad.

Nor how the Union Refrigerator Transit Company case can be deemed an authority which merely decided that tangible personal property *permanently located* in

*another State and in use in that State could not be taxed by Kentucky.*

Nor how the Louisville & Jeffersonville Ferry Company case authorizes a reversal when it merely decided that the State of Kentucky could not assess a franchise granted by the State of Indiana to that company.

I concede that the two first cases might be in point as to the tugs and barges that ply only in New York Harbor. These, however, were not assessed by the judgment entered in this case from which the appeal is prosecuted (Record, p. 723). That judgment recites:

"The court being advised it is considered that the judgment appealed from be and it is hereby reversed, with directions to the lower court to enter a judgment assessing the Southern Pacific Company on its steamships Chalmette, Excelsior, El Dorado, El Paso, El Monte, El Mar, El Sud, El Rio, El Cid, Comus, Proteus, El Valle, El Dia, El Siglo, El Albra, El Amigo, having a situs in the Commonwealth of Kentucky, as of September 1, 1906, at a valuation of \$4,828,180.41; and the steamships above named, and in addition thereto the steamers Momus, Antilles and Creole, as of September 1, 1907, at \$7,682,344.42; and to enter a judgment based on these assessments, for the State and County at the rates fixed by law."

The Delaware, Lackawanna & Western case, the Union Refrigerator Transit Company case and the Louisville & Jeffersonville Bridge Company case are entirely foreign to the issue in fixing the taxable situs of ocean steamships which ply between New York and New Orleans and New Orleans and Havana, which for days are be-

yond the sight of land and are only in New York Harbor to load and unload and for repairs. These coasters do not abide in either port.

This court, in the Union Refrigerator Transit Company case (199 U. S. 194), uses the following pertinent language:

"In that case the question is directly presented whether a corporation organized under the laws of Kentucky is subject to taxation upon its tangible personal property *permanently located in other States and employed there* in the prosecution of its business. Such taxation is charged to be a violation of the due process of law clause of the Fourteenth Amendment. \* \* \* The arguments in favor of the taxation of intangible property at the domicile of the owner have no application to tangible property. The fact that such property is visible, easily found, and difficult to conceal, and the tax readily collectible, is so cogent an argument for its taxation at its situs, that of late there is a general consensus of opinion that it is taxable in the *State where it is permanently located and employed*, and *where it receives its entire protection*, irrespective of the domicile of the owner. \* \* \* In *Com. v. American Dredging Co.*, 122 Pa. 386, 1 L. R. A. 237, 2 Inters. Com. Rep. 221, 9 A. St. Rep. 116, 15 Atl. 443, it was held that a Pennsylvania corporation was taxable in respect to certain dredges and other similar vessels which were built, but not permanently retained, outside of the State. It was said that the non-taxibility of tangible personal property located permanently outside of the State was not because of the technical principle that the situs of personal property is where the domicile of the owner is found. This rule is, doubtless, true as to intangible property, such as bonds, mortgages, and other

evidences of debt. \* \* \* In such cases it is taxable within the jurisdiction where found, and is exempt at the domicile of the owner. The property in that case, however, was held not to be permanently outside of the State, and therefore not exempt from taxation. The rule, however, seems to be well settled in Pennsylvania that so much of the tangible property of a corporation as is situated in another State, and there employed in its corporate business, is not taxable in Pennsylvania."

The case of Delaware, L. & W. R. R. Co. v. Pennsylvania, 198 U. S. 353, did not involve directly the question of the right to tax tangible property by reason of its situs in another State. The issue was the right to assess, as a portion of the capital stock of the railroad company, coal in the State of New York, sent there for sale to meet a market demand.

In that case this court said:

"In the case at bar the coal had been transported to and was actually resting in another State for sale when the appraisement was made, and under the foregoing cases it was then intermingled with property in the foreign State where it rested and was at that time liable to taxation. \* \* \* However temporary the stay of the coal might be in the particular foreign State where it was resting at the time of the appraisement, it was definitely and forever beyond the jurisdiction of Pennsylvania, and it was in the jurisdiction of the foreign State for purposes of taxation and in truth it was there taxed." \* \* \*

Judge Humphrey, in his brief for the company (p. 19) reviewing these cases, is not correct in declaring: "It is

clear that this court has laid down as a principle of law that no State can, without violating the Fourteenth Amendment, tax tangible personal property *which has not an actual situs within its territorial limits* and that this principle applies to ships as well as other property."

The rule is otherwise and to the effect that no State can, without violating the Fourteenth Amendment, *tax tangible personal property which has acquired an actual permanent situs in another State*, and ocean-going steamships do not come within the rule.

A further rule of law which is in conflict with his contention is that no State can tax tangible personal property in transit or temporarily within its boundaries.

I submit that the cases, *Hays v. Pacific Mail Company*, 17 Howard, 596; *Morgan v. Parham*, 16 Wallace, 471; *Ayer & Lord Tie Company v. Kentucky*, 202 U. S. 421; and *Old Dominion Steamship Company v. Virginia*, 198 U. S. 299, fix the situs for taxation of this steamship property at the domicile of the owner.

The first-named case is where California sought to tax steamships plying *wholly in the Pacific Ocean*, but belonging to a New York owner. The Supreme Court decided they were taxable only at the domicile of the owner; to the same effect is the case of *Morgan v. Parham*.

I can not understand how vessels plying THE HIGH SEAS CAN HAVE AN ACTUAL SITUS in any State, and for that very reason the law fixes the situs at the domicile of the owner. Nor does it prejudice the owner

to be taxed at its domicile; the corporation having selected the domicile, with knowledge of its taxing laws.

The law seems well settled that if a water craft ply wholly within a State it is assessable there regardless of the owner's domicile. If plying from port to port of different States, or is an ocean-going steamship plying between different ports, they are treated as intangible property and can only be taxed at the owner's domicile.

Usually it is immaterial as to a State's right to tax, whether taxes have been paid on the property in another jurisdiction. There seems one case which makes an exception as to steamships, which is "if a vessel may by law be assessed in different districts, assessment in one is exclusive of others." 108 Illinois 609, *Halstead v Adams*. In the opinion in that case founded on the Illinois Statute it is said:

"The situs of a sailing vessel as fixed by the Statute for the purpose of taxation, is at one of three places; First, in the county, town, city or village or district, where such vessel belongs; Second, where it is 'enrolled, registered or licensed;' and Third, where it is 'kept when not enrolled, registered or licensed.' It is made the duty of the owner to list such vessels in one of the three places mentioned as the fact may be, and when rightfully listed in one place it is not subject to taxation elsewhere."

As indicating with what uniformity the decisions of this court have been followed by the State courts and the various taxing authorities, and what the consequences might be in upsetting this well established rule,

it is interesting to note the many cases cited in that of *North American Dredging Company v. Taylor* 29 L. R. A. (N. S.) 105 to 110.

The decisions of this court, apparently uniform and sufficiently clear, to the effect that vessels engaged in ocean, state or interstate traffic with no established situs (but going in and out of port upon a fixed run or as the necessities of business demand; or engaged upon no fixed schedule but sailing from one port to another as a carrier of state, interstate or international traffic), shall be assessed at the domicile of the owner; has stood in the way and doubtless discouraged any proceeding to assess this property by New York, Louisiana or Texas. If Kentucky can not assess it, limitation now precludes its assessment.

Counsel for The Southern Pacific Company in their brief, page 13, says: "There can be no doubt that steamships, like other property, are subject to State taxation and that such taxation is not a burden on interstate commerce. This was expressly held in *Transportation Company v. Wheeling*, 99 U. S. 273, and in *Old Dominion Steamship Co. v. Virginia*, 198 U. S. 299." They doubtless advised their client to that effect years ago.

The record shows these steamships have never been assessed for taxation in any other jurisdiction or paid tribute to any sovereign (Record, pp. 81-473-475).

When it is recalled that this \$400,000,000.00 holding company, liable by its charter for a license tax as a stock broker (Record, p. 367), whose domicile is one

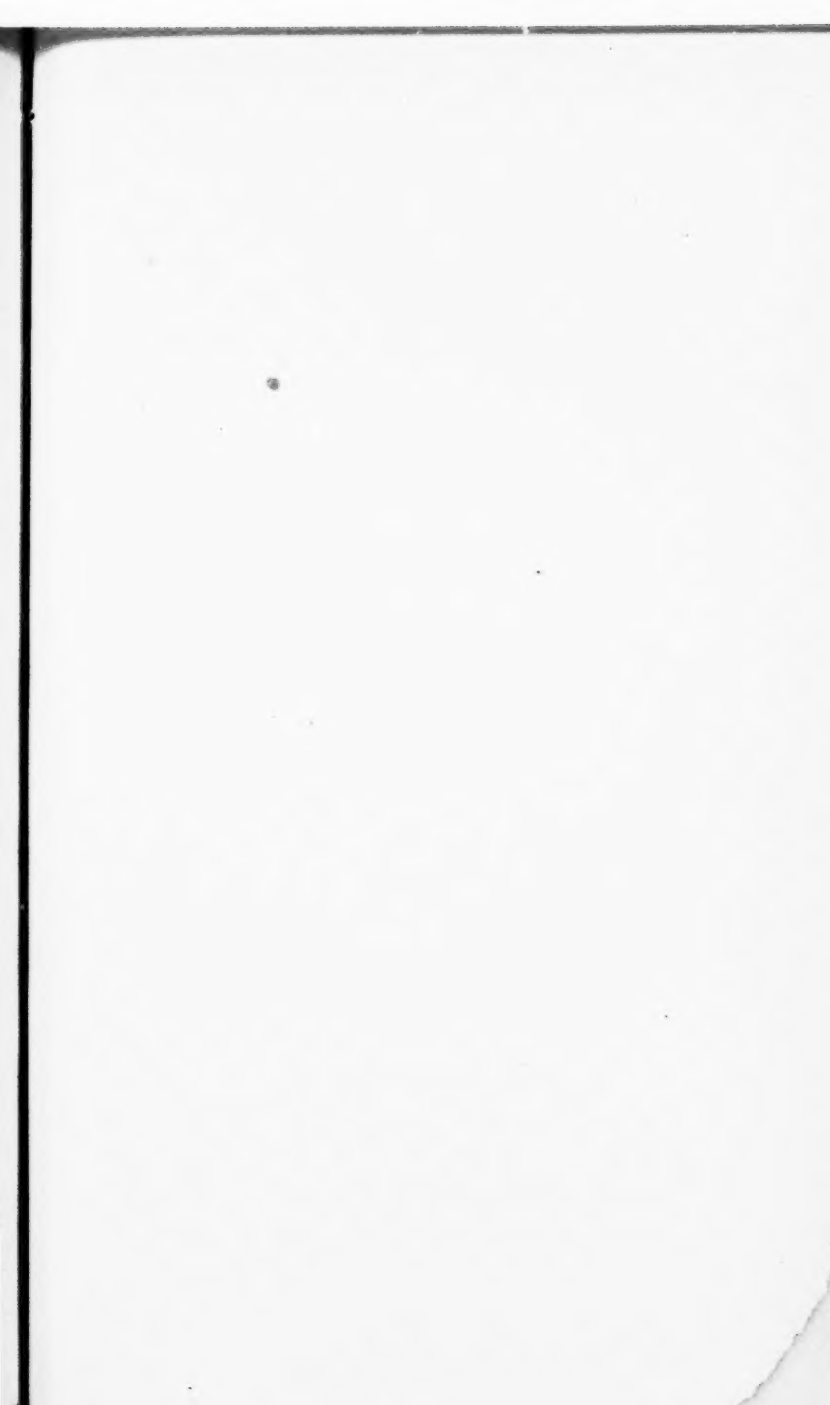
thousand miles from its system (controlled by stock ownership), and whose counsel admit that its steamships, worth \$8,000,000.00, and its stocks and bonds worth, \$300,000,000.00, acknowledge no sovereign and pay no tribute, is it not both expedient and just to tax? The facts suggest a lesson of few words taught by the Sea of Galilee 1900 years ago to some humble fishermen, to "render unto Caesar the things which are Caesar's."

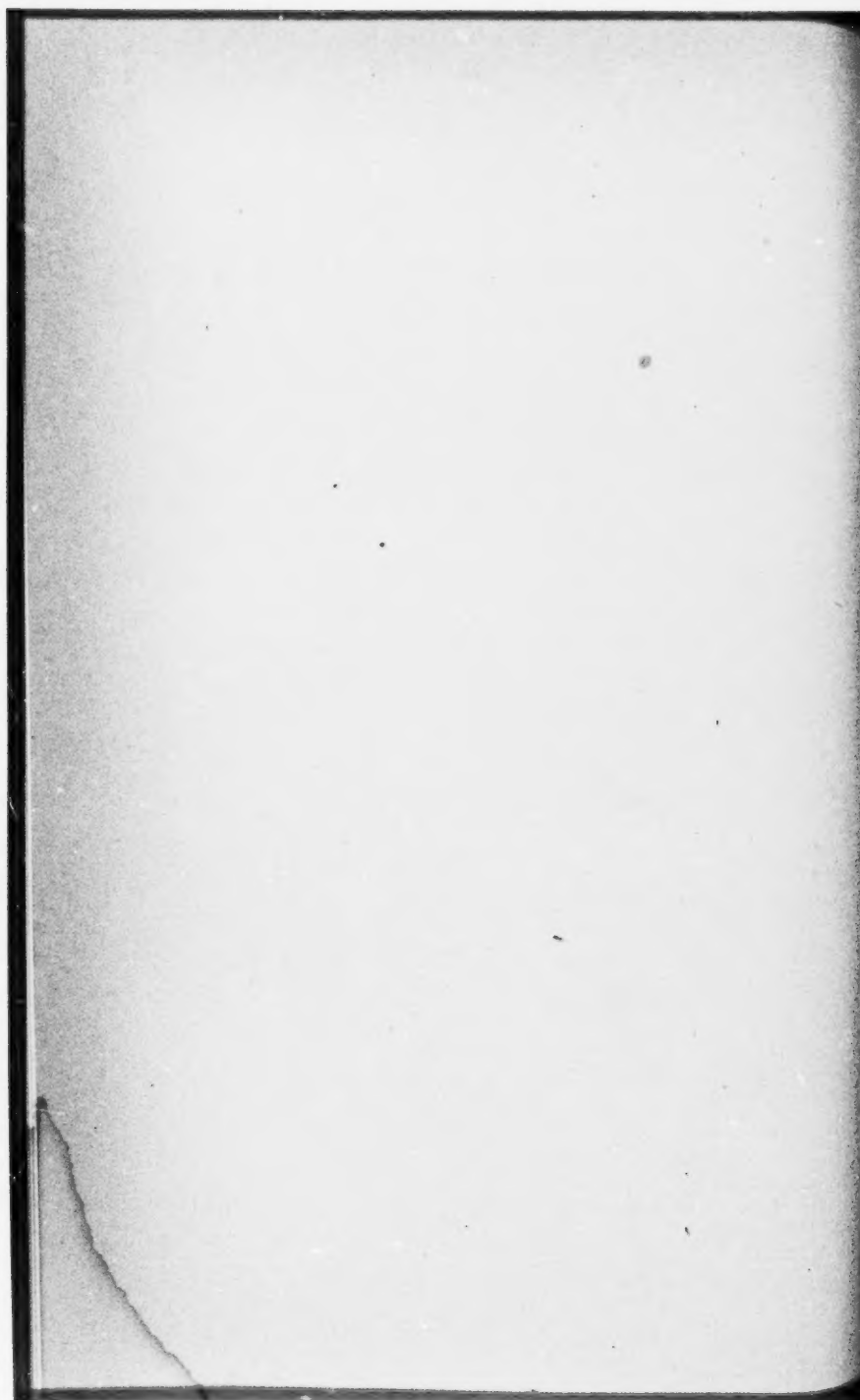
Respectfully submitted,

MATT J. HOLT,

*Of Counsel for Defendant in Error.*

JOSEPH SELLIGMAN,  
*County Attorney,*  
*Of Counsel.*





U. S. SUPREME COURT, U. S.  
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JAMES H. McKENNEY,  
CLERK.

# Supreme Court of the United States

OCTOBER TERM, 1891.

No. 247.

SOUTHERN PACIFIC COMPANY,

*Plaintiff in Error.*

*against*

COMMONWEALTH OF KENTUCKY, on relation of GEORGE  
H. ALEXANDER, HOLLAND L. ANDERSON and  
J. W. CASSADAY, Revenue Agents.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

NOTES OF ARGUMENT FOR PLAINTIFF  
IN ERROR.

MAXWELL EVARTS,

*of Counsel.*

MAXWELL EVARTS,

ALEX. P. HUMPHREY,

*Counsel for Plaintiff in Error.*

# Supreme Court of the United States.

OCTOBER TERM, 1911.

No. 247.

SOUTHERN PACIFIC COMPANY,  
Plaintiff in Error,

AGAINST

COMMONWEALTH OF KEN-  
TUCKY, on relation of GEORGE  
H. ALEXANDER, HOLLAND  
L. ANDERSON and J. W.  
CASSADAY, Revenue Agents.

IN ERROR TO THE COURT OF APPEALS OF  
THE STATE OF KENTUCKY.

## **NOTES OF ARGUMENT FOR PLAINTIFF IN ERROR.**

### **Statement.**

The Southern Pacific Company is a Kentucky corporation. It has no property, operates no railroads and does no business in the State of Kentucky.

It owns, operates and controls a transcontinental line from New York, via New Orleans

and Galveston, to San Francisco and Portland, Oregon. As part of its system it owns and operates a line of steamships between the port of New York and the ports of New Orleans and Galveston. These ships are enrolled at the port of New York (Record, p. 204).

At the time in question there were altogether twenty ships. Of these all were freight ships, except seven which carried both freight and passengers. The freight ships sometimes ran between New York and New Orleans and sometimes between New York and Galveston; that is to say, they were interchangeable (Record, p. 413). *New York* was painted on the stern of these ships as their home port. Each voyage began and ended at New York, and the time at New York between voyages was much longer than the stops made at New Orleans or Galveston. If laid up, they were laid up at the port of New York. If taken off the line for substantial repairs, it was done at the port of New York (Record, p. 413 *et seq.*). The officers of the ships made their homes in New York or its vicinity. Ample facilities for docking the ships and for the storage of freight were furnished to the ships by the City of New York. Fire protection and police protection were given the ships by the City of New York.

The State of Kentucky through its Revenue Agents brought proceedings in the Jefferson County Court against the Southern Pacific Company, claiming that certain property of the Southern Pacific Company, including both intangible property such as stocks, bonds, etc., and tangible property, *i. e.*, ships and other floating equipment, had been omitted from the assessment for taxation (Record, page 7).

The various proceedings were consolidated and the case was tried. The County Court assessed and taxed the ships of the Southern Pacific Company, but declined to either assess or tax the intangible personal property referred to in the statements of the Revenue Agents.

Upon appeal, the Circuit Court affirmed the ruling as to the intangible property, but reversed the finding that the ships of the Southern Pacific Company were taxable in Kentucky, and the petition was dismissed by the Circuit Court. The opinion was written by Judge SHACKELFORD MILLER now on the Court of Appeals of Kentucky who said (Record, p. 630):

"It is clear that the ships of the defendant which are visible, tangible personal property and have never been within the limits of the State or the protecting power of this Commonwealth, can not be taxed here."

Upon appeal to the Court of Appeals of Kentucky the ruling of the Judge of the County Court was affirmed and the petition dismissed as to the intangible property referred to therein, and sustained as to the tangible property, or in other words, the ships of the Southern Pacific Company.

The single question upon this appeal is whether the ships of the Southern Pacific Company which are operated in the coast-wise trade from New York are taxable in the State of New York or in the State of Kentucky.

### **Specifications of Error.**

The Court of Appeals of the State of Kentucky erred in holding :

1. That the ships of the Southern Pacific Company were subject to taxation or assessment for taxation in the Commonwealth of Kentucky, and by so doing deprived the Southern Pacific Company of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

2. In holding that the *situs* of the ships of the Southern Pacific Company, for the purposes of taxation, was in the State of Kentucky.

### FIRST POINT.

**Kentucky is the artificial situs of the ships of the Southern Pacific Company, New York their actual situs. They are therefore not rightfully subject to taxation in Kentucky.**

Taxation is imposed by a State in return for protection given. Unless a State gives some return for a tax imposed there is no ground for the tax. Because of the relation of taxation to protection it has always been the law that real property could only be taxed by a State within whose jurisdiction it was situated. At one time, because of the fiction of law that the *situs* of personal property followed the domicil of its owner, it was believed that personal property should be taxed at the home of its owner. This led to injustice, by permitting a State to impose and levy a tax for which no return was given, *i. e.*, no protection.

This fiction of the law that personal property follows the domicil of the owner has now been abandoned, so far as the question of taxation is concerned, and by the late decisions of this Court it has been definitely determined that personal property should be taxed by the State

within which it is situated. That is to say, the actual *situs* of property determines where a tax thereon should be imposed, upon the theory that protection is the ground and reason for taxation.

In *Union Transit Company vs. Kentucky*, 199 U. S., 194, Mr. Justice BROWN, said, at page 202, as follows :

“ The power of taxation, indispensable to the existence of every civilized government, is exercised upon the assumption of an equivalent rendered to the taxpayer in the protection of his person and property, in adding to the value of such property or in the creation and maintenance of public conveniences in which he shares, such, for instance, as roads, bridges, side walks, pavements and schools for the education of his children. If the taxing power be in no position to render these services or otherwise to benefit the person or property taxed, and such property be wholly within the taxing power of another State, to which it may be said to owe an allegiance, and to which it looks for protection, the taxation of such property within the domicile of the owner partakes rather of the nature of an extortion than a tax, and has been repeat-

edly held by this Court to be beyond the power of the legislature, and a taking of property without due process of law."

This being the rule as to the taxation of personal property in general, it is not clear why an exception should be made in the case of a ship. There is nothing peculiar about a ship, and no obvious reason for the exception. A ship must have an actual *situs*, just as much as any other kind of personal property.

It is certainly extraordinary that the ancient fiction that personal property follows the domicile of its owner should be extended to a case like the present one where it is a physical impossibility for these ships ever to be or to come within the jurisdiction of Kentucky. In cases of the application of the old fiction, it was physically possible for the property to come within the jurisdiction of the domicile of the owner. Here it is not.

It is true that ships especially in the coast-wise trade might by the change of owners or any other cause, change their *situs*. It is true that there is a certain difficulty in determining which of the various ports at which a ship calls should be considered its *situs* for the purpose of

taxation, but it is a question possible of intelligent determination, and because of a certain difficulty attached thereto there would seem to be no good reason for applying to ships alone the abandoned ancient fiction that personal property follows the domicil of its owner for purposes of taxation.

This Court having held that the protection given by the taxing sovereignty to the thing taxed is the true basis of taxation, and that this principle should be applied in the case of personal property, as well as to real estate, it is not plain why ships alone of all personal property should be excepted from the rule. "Annual taxes upon ships and vessels for the support of the State governments as property, upon a valuation as other personal property, are everywhere laid" (*Transportation Company vs. Wheeling*, 99 U. S., 273, 279).

The Court of Appeals of Kentucky declined to hold that the State which furnished protection to the thing taxed alone had the right of taxation, upon the ground that it was prevented from so doing by the decisions of this Court in reference to the taxation of ships.

We do not so understand the decisions. There is no case decided by this Court which holds

that a ship in the coastwise trade can be taxed by an inland State within whose jurisdiction it is a physical impossibility for it ever to come. Further than that, in its later decisions this Court has favored the rule of reason and common sense, viz., that ships should not be taxed in the artificial *situs* of the domicile of the owner, but in their actual *situs*—where they received the protection of the taxing power.

There are in all six cases decided by this Court in reference to the taxation of ships. They are:

*Hays vs. Pacific Mail S. S. Co.*, 17  
Howard, 596.

*St. Louis vs. The Ferry Co.*, 11  
Wallace, 423.

*Morgan vs. Parham*, 16 Wallace,  
471.

*Transportation Co. vs. Wheeling*, 99  
U. S., 273.

*Old Dominion S. S. Co. vs. Virginia*,  
198 U. S., 299.

*Ayer & Lord Co. vs. Kentucky*, 202  
U. S., 409.

In the *Hays case* the State of California undertook to tax the ships of the Pacific Mail Steamship Company. The Pacific Mail Steam-

ship Company was a corporation of the State of New York and operated a line of steamships from New York to San Francisco and ports in Oregon, via the Isthmus of Panama. It was one line starting from New York. All of its ships were registered at the port of New York. It was, of course, physically possible for these ships to be transferred from the Pacific end of the line to the Atlantic end, and to physically come to the port of New York, which was the home of their owner and the place where their owner had its principal office for the transaction of business. This Court, therefore, took the view that because the Isthmus of Panama compelled the Pacific Mail Company to operate in the course of its business certain of its ships on the Pacific Ocean, this was no ground or reason for their taxation on the Pacific Coast, when, as a matter of fact, they were registered in their home port in the State of New York, which was also the home of their owner and where at any time they might come in the course of business.

The *Hays case* certainly does not require the Court to hold in the case at bar that the Southern Pacific Company's ships should be taxed in Kentucky. It is, of course, only common sense

to say that a line of ships operating from their home port, which is also the home of their owner, should pay taxes there, where they are given whatever protection can be given to a ship sailing on the high seas and that it mattered nothing where such ships in the course of their voyages might touch.

In the *St. Louis case* the owner of the boats was an Illinois corporation. The boats ran between St. Louis, Missouri, and East St. Louis, Illinois. When not in actual use they were laid up on the Illinois shore. It is true that the ferry boats were enrolled at St. Louis under the statutes of the United States, but in every other respect the facts conclusively showed that Illinois was the actual *situs* of the boats.

It would have been difficult to hold otherwise than that the boats were taxable in Illinois, the home of the corporation that owned the boats, the place where they operated from and where they were when laid up. The decision of the Court in this case was simply to the effect that the boats had their actual *situs* in the State of Illinois, and Mr. Justice SWAYNE who wrote the opinion of the Court after speaking of the doctrine that personal property followed the domicile of the owner went on to say at page 430:

“ But this doctrine is not allowed to stand in the way of the taxing power in the locality where the property has its actual *situs* and the requisite legislative jurisdiction exists. Such property is undoubtedly liable to taxation there in all respects as if the proprietor were a resident of the same locality.”

In the *St. Louis* case considerable stress was laid by the Court upon two points as determining the *situs* of the ferry boats, namely, (1) that they were laid up when not in use in the State of Illinois, and (2) that their pilots and engineers there resided and that the real estate of the corporation was there situated.

It is important to notice that in the present case the Southern Pacific Company has under lease from the City of New York four piers, that the boats are laid up at the port of New York whenever they are taken off the line, and that the officers commanding the ships reside at New York or in the vicinity of New York. Also the voyages begin and end at New York and the time at New York intervening between voyages is longer than the time spent at Galveston or New Orleans. If the *St. Louis* case has any important bearing upon the particular question

presented in the case at bar, it is upon the proposition that the fiction of the law as to personal property following the domicile of the owner will not be permitted to stand in the way of the taxing power in the place where the property has its real *situs*. The *St. Louis case* can hardly be said to be an authority in favor of the proposition that property which physically cannot under any circumstances have a *situs* in Kentucky should be taxed there.

We now come to the case of *Morgan vs. Parham*. There the ship was registered at the port of New York, where her owner resided. The ship itself was enrolled as a coaster at Mobile, Alabama, and was operated between Mobile and New Orleans. "New York" was painted on the stern of the vessel as her home port. Inasmuch as the ship was owned in New York, was registered in New York, could at any time go to New York, and might at any time have its ports of call changed, it was naturally held that so far as it was possible to determine the *situs* of a coastwise vessel, it was at the place where it was registered and its owner resided, so long, of course, as it was a physical possibility for the ship to go to the port of the State where its owner resided. This case does not pretend to

hold that a coastwise vessel should be taxed in an inland State where it is a physical impossibility for it ever to be.

There was not any fact in the *Morgan case* which enabled the actual *situs* of the ships to be placed at Mobile rather than New Orleans or *vice versa*. Therefore the artificial *situs* to which the ships could physically go was selected. In the case at bar there is no difficulty in fixing the actual *situs* at New York as between New York and New Orleans or Galveston and it is physically impossible for the ships to ever be in the artificial *situs* of Kentucky.

The decision in the *Morgan case* is largely addressed to the point that enrollment has no effect on the question of taxation, and that the purpose of the Court in a case relating to the taxation of ships should be to ascertain as near as may be what under all the circumstances is the actual *situs* of the ship as opposed to an artificial *situs*. The Court held that under all the circumstances of the particular case then before it, the *situs* of the ship for purposes of taxation was New York.

All that the *Morgan case* can possibly be said to hold is that in the absence of any determinative facts clearly indicating which one of two

ports of call is the actual *situs* of a ship, the Court can select as the place for taxation the artificial *situs* of the ship. This case in no way controls the case at bar, for here the facts show beyond any question that New York is the actual *situs* of the ship as against New Orleans or Galveston and that in this case to select the artificial *situs* of Kentucky would be to stretch the doctrine of personal property following the domicile of the owner to an absurdity and permit a State to tax personal property which physically could never be within its jurisdiction.

The case of *Transportation Co. vs. Wheeling* (99 U. S., 273), has no application to the question here presented. All that was settled in that case was that the taxes there levied were not duties of tonnage within the meaning of the federal constitution. That was the question discussed and decided. Incidentally, however, it was held that the boats there concerned should be taxed in West Virginia. Among other things it appeared in the statement of facts that "the vessels started from that city (Wheeling) on their voyages, and when not running were laid up there" (p. 273).

We refer to this as the Court evidently considered these facts important in determining the

*situs* of boats for taxation. We have these same two facts in the present controversy ; that is, that the vessels start from New York, and when not running are laid up there.

In the *Old Dominion case* (198 U. S., 299), it appeared that the ships were owned by a Delaware corporation, and were used in carrying passengers and freight from inland towns in Virginia to Norfolk and Old Point Comfort, where the passengers and freight were transferred to ocean-going ships. This course of business was necessary because of the shallow water in the rivers, which prevented the ocean-going vessels from navigating in the inland waters of Virginia. The ships were enrolled outside of Virginia, and had the name of the port of such enrollment painted on their sterns.

This Court, speaking through Mr. Justice BREWER, applied the principle which we insist should be applied here. In his opinion, at page 305, he said :

“ The general rule is that tangible personal property is subject to taxation by the State in which it is, no matter where the domicile of the owner may be.”

Applying this rule to the facts in the case before it this Court held that the ships in question

though owned by a Delaware corporation and enrolled outside of Virginia were proper subjects for taxation in Virginia because the real *situs* and not the artificial *situs* is what should determine the right of taxation, and as the ships had an actual *situs* in Virginia that they should there be taxed without regard to any prior decisions of this Court, and it was said at page 309 :

“ Our conclusion is that where vessels though engaged in interstate commerce are employed in such commerce wholly within the limits of a State they are subject to taxation in that State although they may have been registered or enrolled at a port outside its limits.”

We believe that the principle of the decision in the *Old Dominion case* must necessarily be applied in the present case and that the ships of the Southern Pacific Company are not to be taxed in the artificial *situs* of Kentucky simply for the reason that Kentucky is the domicil of their owner, when they receive from that State no protection. It would be an extreme application of the doctrine that personal property follows the domicil of the owner to hold that personal property physically incapable of ever being within the

jurisdiction of the taxing power can yet attain there an artificial *situs*.

We do not say that these ships should be taxed in New York simply because they are there enrolled. Enrollment or registry of a ship, as shown by the decisions of this Court, is not a controlling circumstance in the question of taxation. Enrollment or registry is only useful as helping to determine the question of the actual *situs* of the ships as against an artificial *situs*. It is the object of the law to pick out the actual *situs*, if possible, favoring the actual *situs* for the purpose of taxation as against the artificial *situs*. If this principle is applied, of course the Court will seek the facts which tend to show the real *situs* in New York as against the artificial *situs* in Kentucky where it is physically impossible for the ships ever to be. Now one of those facts, not controlling but useful in determining the question of *situs*, is that the boats were enrolled at the port of New York. Further than that, when not in operation they were laid up in New York. When laid up for important repairs they were laid up in New York. They had their piers at the port of New York, four or five in number. Their voyages began in New York and ended in New

York. Their stops between voyages were longer in New York than in Galveston or New Orleans. Their officers and crew lived in New York and its vicinity. Police protection and fire protection were furnished them by New York. They received the protection of the port of New York far more than they received the protection of any other port. Now if the principle is right that the actual *situs* must be found as against the artificial *situs* all these facts tend to show that the real *situs*, so far as it is possible for a coastwise vessel to have one, was in the port of New York. On the one hand we have Kentucky furnishing no protection whatever and to which the ships can never under any conditions come. On the other hand we have New York furnishing greater and more extended protection to these ships than any other place. If protection is the test of the right to tax, then clearly these ships are taxable in New York and not in Kentucky.

We, therefore, say that when this Court held in the *Old Dominion Steamship Company case* that the artificial *situs* of Delaware was not to control the taxation of the ships there involved as against their actual *situs* in Virginia, although it was possible for these ships in the *Old Dominion case* to go to the State of Delaware,

then it would seem that the decision here should be that these ships which physically cannot ever be in Kentucky, and which cannot therefore under any possible circumstances ever receive any protection from Kentucky, should be taxed in the State that does give them more protection than any other State, and where they remain when they are not on the high seas for longer periods of time than they do in any other port.

The principle declared in the *Old Dominion case* was that every effort should be made to find the real *situs* as against the artificial *situs*. There must always be an actual *situs* of property somewhere and in some place. Now, the artificial *situs* being a perfectly impossible place for the taxation of these ships, if protection is the foundation of the right of taxation, then it is the duty of the Court to find where the real *situs* is, and the facts in this case show that, so far as there is any real *situs* for a vessel engaged in business on the high seas, the *situs* of these ships is at the port of New York.

We now come to the *Ayer case* (202 U. S., 409). We do not understand that this case conflicts in any way with the principle which we insist should apply in the case at bar. It simply holds that the place of enrollment of a vessel is not controlling

on the question of taxation, and that the boats there involved were not to be taxed in Kentucky simply because they were enrolled in Kentucky, when as a matter of fact they were owned by an Illinois corporation, and their business was in bringing railroad ties to a port in Illinois. It is true that in the course of the opinion it was said by Chief Justice WHITE at page 421, that

“The general rule has long been settled as to vessels plying between the ports of different States engaged in the coastwise trade that the domicil of the owner is the *situs* of a vessel for the purpose of taxation, wholly irrespective of the place of enrollment.”

Of course in making that statement the Court had in mind the question of enrollment and its relation to the taxation of ships. We do not understand the Court to have meant that a vessel engaged in the coastwise business on the high seas was to be taxed by an inland State from which it could not possibly receive protection. As we have pointed out, in every case in this Court where the principle that the domicil of the owner was to be regarded as the *situs* of the vessel for the purpose of taxation, it was always a domicil where it was physically possi-

ble for that ship to be, and not a domicile where under no circumstances the taxing power could have the ship within its jurisdiction.

The real question here is: Where are these ships rightfully subject to taxation? Are they to be taxed in a State which gives them and can give them no protection or in a State which can and does give them protection? Ought they to be taxed in a State where the fiction of the law as to personal property following the domicile of the owner must be extended in a very extreme degree, or should they be taxed where they have their actual *situs*, so far as it is possible for ships engaged in the coastwise trade to have a *situs*, and pay a tax to that State which does something for them in return? The whole controversy comes down to the one proposition—is it right that Kentucky should levy a tax in return for which it does nothing, when another State does furnish protection, and by such protection earns the right to impose a proper tax?

As we understand the ship tax cases it is for the Court here to find from the facts the actual *situs* of the ships as against their artificial *situs* in Kentucky where they cannot under any possibility ever be and having found from the un-

disputed facts the real *situs* to hold that as a matter of law there and there only can they be taxed. In the absence of all other determinative facts the Court might in some instances hold that the domicil of the owner was the *situs* of the ship since it might be presumed that in case of need the ship would go there for protection, but no such presumption can exist when the owner is domiciled in an inland State in which it is physically impossible for the ship to seek protection. It is true that the actual *situs* of a ship operating on the high seas between the ports of different States may be in some cases more difficult to determine than the actual *situs* of a ship operating entirely within the limits of one State, as in the *Old Dominion case*, but it must just the same have an actual *situs* somewhere and it would seem that as between the different ports that place should be deemed the actual *situs* which furnishes the greater protection. The evidence here shows that place to be New York, and under the decision in the *Old Dominion case*, there the ships should be taxed as against the artificial *situs* of Kentucky under the ancient rule now abandoned that personal property for purposes of taxation follows the domicil of the owner.

**SECOND POINT.**

**The decree below taxing the ships of the  
Southern Pacific Company should be re-  
versed.**

MAXWELL EVARTS,  
Of Counsel.

MAXWELL EVARTS,  
ALEX. P. HUMPHREY,  
Counsel for Plaintiff in Error.

7  
Office Supreme Court, U. S.  
**FILED.**

SEP 30 1911

JAMES H. MCKENNEY  
CLERK

# Supreme Court of the United States

OCTOBER TERM, 1911

**No. 247.**

Southern Pacific Company, - - - *Plaintiff in Error,*

*VERSUS*

Commonwealth of Kentucky, ex rel

George H. Alexander, Holland

L. Anderson, and John W. Casseday,

Revenue Agents, - - - - - *Defendants in Error.*

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## BRIEF FOR PLAINTIFF IN ERROR

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**ALEX P. HUMPHREY,**

*Of Counsel.*

**MAXWELL EVARTS,**

**ALEX P. HUMPHREY,**

*Counsel for Plaintiff in Error.*



# In the Supreme Court of the United States

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SOUTHERN PACIFIC COMPANY, - - *Plaintiff in Error.*

*versus*

COMMONWEALTH OF KENTUCKY EX REL

GEO. H. ALEXANDER, HOLLAND L. ANDER-  
SON, AND JOHN W. CASSEDAY, REVENUE

AGENTS, - - - - - *Defendants in Error.*

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BRIEF FOR SOUTHERN PACIFIC COMPANY,  
PLAINTIFF IN ERROR.

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IN ERROR TO THE COURT OF APPEALS OF THE  
STATE OF KENTUCKY.

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This is a large record but attention need be paid only to a small part of it in order to determine the question now before this court.

The case was tried first in the Jefferson County Court; then in the Jefferson Circuit Court; then in the Court of Appeals; and from a final judgment of the last court a writ of error was sued out and allowed by its Chief Justice.

There is a provision in the Statutes of Kentucky under which an officer called a revenue agent can apply to the county court of the domicile of a defendant for the

purpose of having the county court make an assessment of any property belonging to the defendant which has been omitted from taxation. The proceeding is instituted by filing a statement, and upon this basis pleadings are made up in the ordinary way. An appeal lies from the county court to the circuit court, where the case is tried *de novo*. From the circuit court an appeal lies to the Court of Appeals, which is the court of last resort.

There were several statements filed by the Commonwealth on the relation of revenue agents against the Southern Pacific Company, claiming that property belonging to the defendant and taxable in Kentucky had been omitted from assessment as of September 1, 1906, for the taxes of 1907, and as of September 1, 1907, for the taxes of 1908. These statements were consolidated and proceeded as one case.

Two distinct kinds of property were claimed to have been thus omitted: First, stocks, bonds, securities and choses in action; Second, steamships, barges and other floating equipment.

It is sufficient to state as to the first that the County Court, the Circuit Court and the Court of Appeals all held that this character of property had been duly assessed and taxes duly paid thereon as provided by Section 4081 of the Statutes.

The Southern Pacific Company is a corporation created by special act of the Legislature of Kentucky. The act as amended will be found R. 364.

The Southern Pacific Company has no line of railway in Kentucky and hence its assessment is governed by the last clause of Section 4081.

It will appear from reading this last clause that the assessment thus made includes only the corporate franchise, stocks, bonds, securities and choses in action of the company. It does not include any tangible property.

The office of the Southern Pacific Company, where the annual meeting of its stockholders is held, is located at Beechmont in Jefferson County, Kentucky. The County Court held that the floating equipment of the Southern Pacific Company had its situs for taxation at Beechmont, and directed an assessment accordingly. The opinion of the county judge will be found on page 369 of the Record, and the judgment on page 3 of the Record.

As stated above, an appeal was taken to the Jefferson Circuit Court, where some new evidence was introduced. That court dismissed the statement absolutely, holding in concurrence with the County Court as to the intangible property, but holding, contrary to the opinion of the County Court, that the floating equipment had no taxable situs in Kentucky. This resulted in an absolute dismissal of the statement. (See R. 629 for the opinion of Circuit Judge Shackelford Miller, now one of the judges of our Court of Appeals; for judgment see R. 397.)

When the case went to the Court of Appeals that Court held that this floating equipment was taxable, and reversed the judgment in that respect, affirming it in all other respects. (For opinion of Court of Appeals, see R. 639.)

A petition for re-hearing was put in by the Commonwealth, but this was overruled, and the Court of Appeals extended its mandate so as to make a final order. (R. 723.)

The Southern Pacific Company thereupon sued out its writ of error, executing a bond to operate as a super-sedeas, and assigning the following errors:

“The said court erred in holding that the ships of the plaintiff in error were subject to taxation or assessment for taxation by the Commonwealth of Kentucky, or that they had a situs in Kentucky rendering them or any of them liable for taxation or assessment for taxation by the Commonwealth of Kentucky:

“(1) Because in so doing the plaintiff in error is deprived of its property without due process of law, contrary to the provisions of the Constitution of the United States and especially to the Fourteenth Amendment thereof;

“(2) Because said judgment of the Court of Appeals of Kentucky deprives the plaintiff in error of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States;

“(3) Because said judgment of the Court of Appeals of Kentucky subjects to taxation within the territorial limits of Kentucky tangible property located beyond the territorial limits of Kentucky and in this way violates the Constitution of the United States and particularly the Fourteenth Amendment thereof.”

### **STATEMENT OF FACTS.**

For an apprehension of the matters here involved it may be convenient to state somewhat fully the controversy between the Southern Pacific Company and the

State of Kentucky as to taxation by the State: and this for the reason that by so doing we can point out to the court what parts of this record are material to the controversy now before it.

By the law of the State of Kentucky a railroad company is required to report to the Auditor the total length of the railroad, including its length within and without the State, together with the average value per mile thereof, for the purpose of being operated as a carrier of freight and passengers, and including its engines and cars. (Ky. Stat. 4096.) This report is laid before the Railroad Commission, which determines the value. (Ky. Stat. 4098.) This is called an assessment of the tangible property of the railroad company.

But there is a further assessment of what is called the franchise of certain corporations. Thus by Ky. Stat. 4077 every railroad company and every company performing any public service is required to pay a tax upon what is called its franchise. The Auditor, Treasurer and Secretary of State are constituted a Board of Valuation and Assessment for fixing the value of this franchise. Ky. Stat. 4078 provides for what is to be contained in the statement made to the Auditor of Public Accounts in order to enable the Board to determine this franchise.

By Sections 4079, 4080, and 4081, Ky. Stat., it is provided that the State Board of Valuation and Assessment shall ascertain the value of the capital stock of the corporation (which, by frequent decisions in Kentucky, has been held to mean the totality of value of all property, tangible and intangible), and, where the lines of the company extend beyond Kentucky, determine on a

mileage, or, in some cases, a gross earnings basis, the percentage of this total value of the capital stock applicable to Kentucky. It is then required to deduct therefrom the value of the tangible property, and the remainder is fixed as the value of the franchise.

The Southern Pacific Company had no occasion to make any report to the Auditor for the purpose of assessment by the Railroad Commission because it had no line of railroad in Kentucky. It did, however, make the report to the Auditor to be laid before the Board of Valuation and Assessment for the purpose of fixing its franchise. As, however, the Southern Pacific Company had no line of railroad in Kentucky and made no earnings in Kentucky, it was not possible to apply to it literally the rules laid down in the statute for this proportioned assessment.

The Court of Appeals of Kentucky, in the case of Morrell Refrigerator Car Company v. Commonwealth, 128 Ky. 450, decided that notwithstanding the fact that a corporation required to report for the fixing of a franchise tax was not within the literal terms of the statute as to a proportioned assessment, yet it must be held to be within its reason as it would be a denial to it of the equal protection of the laws not to apply a proportioned assessment.

This hiatus in the law as to such a company as the Southern Pacific Company was filled up at the session of the legislature which met in January, 1906, by adding to Section 4081 the last clause thereof, the section as a whole reading as follows:

“If the corporation organized under the laws of this State, or of some other State government, be a

railroad, telegraph, telephone, express, sleeping, dining, palace or chair car company, or a corporation performing any other public service, the lines of which extend beyond the limits of the State, the said Board will fix the value of the capital stock as hereinbefore provided, and that proportion of the value of the capital stock which the length of the lines operated, owned, leased or controlled in this State, bears to the total length of the lines owned, leased, or controlled in this State and elsewhere, shall be considered in fixing the value of the corporate franchise of such corporation liable for taxation in this State; and such corporate franchise shall be liable to taxation in each county, incorporated city, town or district through or into which such lines pass, or are operated, in the same proportion that the length of the line, in such county, city, town or district bears to the whole length of lines in this State; but if any such railroad or other corporation organized under the laws of this State have all of its lines outside of this State, the said Board shall fix the value of its entire capital stock as hereinbefore provided, and apportion to this State for taxation therein the proper proportion and not less than one per cent of its said capital stock, and the amount so apportioned shall be the value of its intangible property, including its corporate franchise, stocks, bonds, securities and choses in action, subject to taxation in this State and in the county, city, town and district where its principal place of business in this State may be located."

At the April term, 1909, of the Court of Appeals of Kentucky, three cases were decided involving the taxation of the Southern Pacific Company. In one of these cases—*Southern Pacific Company v. Commonwealth*, 134 Ky. 410—it appeared that prior to the passage of the amendment of 1906 the Southern Pacific Company had regularly reported to the State Board of Valuation and Assessment, and that Board had fixed an arbitrary assessment upon its so-called franchise. It was held that

the Board was quite within its rights in so doing and that there could be no further assessment of the property of the Southern Pacific Company by the State of Kentucky.

In the case of *Commonwealth v. Southern Pacific Company*, 134 Ky. 491, the question came as to whether certain judgments that had been rendered against the Southern Pacific Company by agreement as to the amount of taxes were valid and binding and a bar to future proceedings. It was held that they were.

The third case—*Commonwealth v. Southern Pacific Company*, 134 Ky. 417—is the case now at bar. Here an effort has been made to revise the assessment of the State Board of Valuation and Assessment as to the intangible property of the Southern Pacific Company, made under Section 4081 as amended, and a further effort to have an assessment of its floating equipment as tangible property.

The Court of Appeals held that there should be an assessment of this floating equipment as tangible property but in all other respects affirmed the judgment of the court below which had denied any revision of the assessment of the franchise, including stocks, bonds, securities and choses in action.

A large part of this record was made up in the preparation of the issues as to this so-called franchise assessment.

As to the assessment of the floating equipment only a small fraction of the record need be considered.

There were several different statements—one for the year 1907 and two for the year 1908—but they were all consolidated into one.

The answer to this consolidated statement may be found on p. 193 of the record. It is there stated (pages 196, 197, and 198) that the Southern Pacific Company is a corporation created by the laws of the State of Kentucky, conducting a line of steamships from New York to New Orleans and Galveston, and a line of railroad from El Paso, Texas, to San Francisco, California, Portland, Oregon, and Ogden, Utah, and various other branch lines; that all of its properties of all kinds had been at all times beyond the boundaries of the State of Kentucky, and none of them have been kept therein and none ever employed therein but all of them have had an actual situs beyond the boundary of the State of Kentucky, and all of them have been employed in the business of the defendant as a common carrier and in the organization, operation and conduct of its transportation lines and not otherwise, and "none of them are taxable in the State of Kentucky, and to tax them would be in violation of the Fourteenth Amendment of the Constitution of the United States and a regulation of interstate commerce."

At p. 198 the answer further alleges that all of the defendant's tangible property—real estate, material, supplies, equipment and ships—had an actual situs outside of the boundaries of the State of Kentucky during all of the periods in controversy, and that to include their value in any taxation in the State of Kentucky would be violative of the Fourteenth Amendment to the Constitution of the United States.

The result of the litigation in the County Court, Circuit Court and the Court of Appeals has been given above.

Under the charter of the Southern Pacific Company there is no doubt of its right to operate a steamship line. This charter is given at p. 364 of the record.

By a stipulation filed October 27, 1908 (R. 203), it will appear that all of the steamers, tugs and barges were enrolled or licensed during the periods mentioned in these proceedings at the ports set opposite their names. From this it appears that all of the ships which were finally declared to be taxable were enrolled and licensed in the port of New York. This will appear from a comparison of the names of the ships in this stipulation and in the judgment of the Court of Appeals at p. 723.

The deposition of William Mahl, Comptroller of the Southern Pacific Company, was taken in reference to the matter now in controversy. He testified that the Southern Pacific Company was engaged, in the years in controversy, in the operation of a system of transportation lines (R. 444); that it was formed purely for the purpose of unifying the management of the transportation line from New York to San Francisco; and from its organization it was operated as a unit by the Southern Pacific Company as lessee, but later the Southern Pacific Company was compelled, by the Act of the Legislature of the State of Texas, in 1887 or 1889, to abrogate all leases under which the lines in that State were operated; that the Southern Pacific Company carries any freight shipped by its steamers from New York to San Francisco on one bill of lading (R. 457); that the Southern Pacific Company operates a line of steamships plying between New York and New Orleans and Galveston (R. 467).

In response to a request by counsel for the Commonwealth Mr. Mahl submitted a statement showing the

number of steamships, tugs and barges owned by the Southern Pacific Company and their estimated value at various dates. (R. 468, R. 580.) At R. 473 Mr. Mahl states that the Southern Pacific Company has paid no taxes on its ships, barges and tugs anywhere. He files an exhibit (R. 474) showing the home port of the steamers, tugs and barges owned by the Southern Pacific Company. (R. 586.) He says that it does not list these barges, ships and tugs for taxation in either the city or State of New York. On cross-examination he says that none of this floating equipment has ever, to his knowledge, been nearer to the State of Kentucky than the Atlantic seaboard or the Gulf of Mexico; that there are 3700 employes on the steamship lines (R. 474); that the Southern Pacific Company leases four piers in New York for the transaction of its business.

The deposition of C. W. Jungen was taken after the case got to the Circuit Court. It may be found at R. 408. From that it will appear that all of the vessels mentioned in the judgment of the Court of Appeals are enrolled in New York for the coastwise trade; that they ply between New York and New Orleans or New York and Galveston; that for two or three weeks of every year they are laid up for repairs in New York (R. 402); that the Chalmette and Excelsior are operated some times between New Orleans and Havana, and when this is done their enrollment is surrendered and a registry taken out for the foreign trade, this registry being taken out at New Orleans.

Jungen proved that as to certain of the tugs and barges owned by the Southern Pacific Company, they

never left the harbor of New York, and as to one or two, that they never left the harbor of Galveston, being used within the harbor limits of these two cities for the purpose of serving the steamships plying between New York and New Orleans and New York and Galveston. All of these tugs and barges so used exclusively within the harbors of New York and Galveston were excluded from the judgment in the court below and were not held as having a situs in the State of Kentucky, it being practically conceded that under the case of *Old Dominion Steamship Co. v. Virginia*, 198 U. S. 299, they had acquired, beyond a doubt, an actual situs in New York and Texas respectively.

Jungen also proved that the Southern Pacific Company had the exclusive use of four docks in New York (R.427).

**ARGUMENT.**

In considering the question now before the court we do not believe it to be at all necessary to go outside of the reported decisions of this court. There can be no doubt that steamships like other personal property are subject to State taxation, and that such taxation is not a burden on interstate commerce. This was expressly held in *Transportation Co. v. Wheeling*, 99 U. S. 273, and in *Old Dominion Steamship Co. v. Virginia*, 198 U. S. 299.

But this does not mean, of course, that every State can tax a particular steamship. To the contrary, we submit that no State can tax a steamship where such steamship does not have a situs in that State.

The rule that personal property follows the domicile of its owner is clearly limited in matters of taxation. No one would now dispute that without any regard to the domicile of its owner personal property can be taxed wherever it has an actual situs; and the opposite of this is likewise firmly established. To tax personal property where it has no situs is to take property without due process of law, and is prohibited by the Fourteenth Amendment.

As to real estate it was never doubted that the taxing laws of a State could have no extra-territorial force. It has now come to be settled law that the same is true as to personal property. The three cases in which this has been established by this court are:

*Louisville & Jeffersonville Ferry Co. v. Kentucky*,  
188 U. S. 385;

D. L. & W. R. R. Co. v. Pennsylvania, 198 U. S. 342;  
Union Transit Co. v. Kentucky, 199 U. S. 195.

In the first of these cases this court held that it was not competent for Kentucky to include in its assessment of the property of the Louisville & Jeffersonville Ferry Company an incorporeal hereditament derived by it under the law of Indiana.

In the second case it was held that it was not competent for the State of Pennsylvania to include in the valuation of the property of the Delaware, Lackawanna & Western Railroad Company coal belonging to that company which it had stored in New Jersey and New York.

In the third of these cases it was held that it was not competent for the State of Kentucky to tax all the cars of the Union Transit Company, a corporation of the State of Kentucky, when these cars were customarily employed upon lines of railroad extending throughout the United States, and hence only occasionally and to a proportionate part present in Kentucky.

It is to be observed that in all three of these cases an effort was made to tax a corporation created by the law of the taxing State, upon property belonging to such corporation, and that in each case this power to tax was denied because the property sought to be assessed did not have a situs in the taxing State, although the taxing State was the one under whose laws the corporation was organized.

In the opinion of Mr. Justice Brown in the last case—Union Transit Co. v. Kentucky, 199 U. S. 195—the reason for the rule is fully stated. Thus at page 202 it is said:

“The power of taxation, indispensable to the existence of every civilized government, is exercised upon the assumption of an equivalent rendered to the taxpayer in the protection of his person and property, in adding to the value of such property, or in the creation and maintenance of public conveniences in which he shares, such, for instance, as roads, bridges, sidewalks, pavements and schools for the education of his children. If the taxing power be in no position to render these services, or otherwise to benefit the person or property taxed, and such property be wholly within the taxing power of another State, to which it may be said to owe an allegiance and to which it looks for protection, the taxation of such property within the domicile of the owner partakes rather of the nature of an extortion than a tax, and has been repeatedly held by this court to be beyond the power of the legislature, and a taking of property without due process of law.”

Again it is said:

“It is also essential to the validity of a tax that the property shall be within the territorial jurisdiction of the taxing power. Not only is the operation of State laws limited to persons and property within the boundaries of the State, but property which is wholly and exclusively within the jurisdiction of another State receives none of the protection for which the tax is supposed to be a compensation. This rule receives its most familiar illustration in the cases of land which, to be taxable, must be within the limits of the State. Indeed, we know of no case where a legislature has assumed to impose a tax upon land within the jurisdiction of another State, much less where such action has been defended by any court. It is said by this court in the *Foreign-Held Bond Case*, 15 Wall. 300, 319, that no adjudication should be necessary to establish so obvious a proposition as that property lying beyond the jurisdiction of a State is not a subject upon which her taxing power can be legitimately exercised.

“The argument against the taxability of land within the jurisdiction of another State applies with equal potency to tangible personal property beyond the jurisdiction. It is not only beyond the sovereignty of the taxing State, but does not and can not receive protection under its laws. True, a resident owner may receive an income from such property, but the same may be said of real estate within a foreign jurisdiction. Whatever be the rights of the State with respect to the taxation of such income, it is clearly beyond its power to tax the land from which the income is derived.”

Again it is said:

“The arguments in favor of the taxation of intangible property at the domicile of the owner have no application to tangible property. The fact that such property is visible, easily found and difficult to conceal, and the tax readily collectible, is so cogent an argument for its taxation at its situs, that of late there is a general consensus of opinion that it is taxable in the State where it is permanently located and employed and where it receives its entire protection, irrespective of the domicile of the owner. We have, ourselves, held in a number of cases that such property permanently located in a State other than that of its owner is taxable there. (Omitting authorities.) We have also held that if a corporation be engaged in running railroad cars into, through and out of the State, and having at all times a large number of cars within the State, it may be taxed by taking as the basis of assessment such proportion of its capital stock as the number of miles of railroad over which its cars are run within the State, bears to the whole number of miles in all the States over which its cars are run. *Pullman Car Co. v. Pennsylvania*, 141 U. S. 18.”

Again at page 210 the court makes the following quotation from the case of *Delaware Railroad Co. v. Pennsylvania*, 198 U. S. 341:

"However temporary the stay of the coal might be in the particular foreign States where it was resting at the time of the appraisement, it was definitely and forever beyond the jurisdiction of Pennsylvania. And it was within the jurisdiction of the foreign States for purposes of taxation, and in truth it was there taxed. We regard this tax as in substance and in fact, though not in form, a tax specifically levied upon the property of the corporation, and part of that property is outside and beyond the jurisdiction of the State which thus assumes to tax it."

After making this citation the court proceeds:

"The decision in that case was really broader than the exigencies of the case under consideration required, as the tax was not upon the personal property itself but upon the capital stock of a Pennsylvania corporation, a part of which stock was represented by the coal, the value of which was held should have been deducted.

"The adoption of a general rule that tangible personal property in other States may be taxed at the domicile of the owner involves possibilities of an extremely serious character. Not only would it authorize the taxation of furniture and other property kept at country houses in other States or even in foreign countries, of stocks of goods and merchandise kept at branch establishments when already taxed at the State of their situs, but of that enormous mass of personal property belonging to railways and other corporations which might be taxed in the State where they are incorporated, though their charters contemplated the construction and operation of roads wholly outside of the State, and sometimes across the continent, and when in no other particular they are subject to its laws and entitled to its protection. The propriety of such incorporations, where no business is done within the State, is open to grave doubt, but it is possible that legislation alone can furnish a remedy."

There have been in this court six cases involving the question as to where ships can be taxed. They are:

- Hays v. Pacific Mail Co., 17 How. 596.
- St. Louis v. Wiggins Ferry Co., 11 Wall. 423.
- Morgan v. Parham, 16 Wall. 471.
- W. P. & C. Transportation Co. v. Wheeling, 99 U. S. 273.
- Old Dominion Steamship Co. v. Virginia, 198 U. S. 299.
- Ayer & Lord Tie and Lumber Co. v. Kentucky, 202 U. S. 409.

The cases of Pacific Mail Co., Wiggins Ferry Co., and the Parham case are all reviewed in the Old Dominion Steamship Co. case, 198 U. S. 299, and Ayer & Lord Co. v. Kentucky, 202 U. S. 409. Of the Pacific Mail case it is said, at page 308 of 198 U. S.:

“Clearly the ruling was that these steamers had acquired no actual situs within the State of California; that occasionally touching at ports in the State did not make them incorporated with the other personal property of the State. Hence, having no situs in California they were not subject to taxation there, but were subject to State taxation at the artificial situs established by their registry.”

Of the Parham case it is said, at p. 309, 198 U. S.:

“In other words, here as in the prior case, there was no actual situs of the vessel. She had not become commingled with the general property of the State and was therefore subject to taxation at the artificial situs, the port of her registry.”

Practically the same thing is said of these cases and of the Wiggins Ferry case at 202 U. S. 421, 422.

In Ayer & Lord Co. v. Kentucky, 202 U. S. 421, it is said:

“The general rule has long been settled as to vessels plying between the ports of different States, engaged in the coastwise trade, that the domicile of the owner is the situs of a vessel for the purpose of taxation, wholly irrespective of the place of enrollment, subject, however, to the exception that where a vessel engaged in interstate commerce has acquired an actual situs in a State other than the place of the domicile of the owner, it may there be taxed because within the jurisdiction of the taxing authority.”

It is clear that this Court has laid down as a principle of law that no State can, without violating the Fourteenth Amendment, tax tangible personal property which has not an actual situs within its territorial limits, and that this principle applies to ships as well as to other property.

The problem, therefore, to be solved in each case is this: Is there a situs of the ships in the State which is attempting to tax them?

In the case at bar these circumstances appear:

The Southern Pacific Company is a corporation created by the laws of the State of Kentucky. The particular property here sought to be taxed has never been in Kentucky. It is of a character obviously designed not to be used in Kentucky. These steamships are a part of a regular transportation line extending from New York to San Francisco. They are enrolled in the port of New York. They there have the exclusive use of four piers leased from the State of New York. When laid up, as they are every year for two or three weeks, for repairs, they are laid up in the State of New York. They are never laid up elsewhere for such a purpose and are not elsewhere repaired except where, in cases of emergency, light repairs can be made while the vessel is in port. It is impossible to say of these ships that they have any situs

in Kentucky other than that derived from a pure legal fiction that personal property follows in its situs the domicile of its owner, without regard to the actual facts of the case. But as a principle of law this doctrine has been entirely repudiated by this court. The reason given by this court for its repudiation is that taxation is based upon protection and that property should contribute to the expenses of that government from which it derives this protection. To hold that these ships as thus employed are taxable in Kentucky would result in giving to a fiction a potency in the inverse ratio of its truth. It would enable shipowners to vest their property in corporations far remote from the place where the ships were used. A corporation created by the laws of South Dakota could own ferry-boats plying between New York and Jersey City, and yet insist that these ferry-boats had no taxable situs except in South Dakota.

It is true that there may be a difficulty in certain cases in determining what is the situs of a ship; but there are in every branch of jurisprudence cases on the border line. This does not seem to us to be one of them.

We respectfully submit that in the case at bar it can not be successfully maintained that this floating equipment has or has ever had a taxable situs in the State of Kentucky.

We therefore ask that the judgment of the lower court be reversed and the case remanded with instructions to dismiss the statements.

Respectfully submitted,

ALEX P. HUMPHREY,

MAXWELL EVARTS,

*Of Counsel.*

ALEX P. HUMPHREY,

*Counsel for Plaintiff in Error.*

FILED


JAN 16 1911

JAMES H. McKENNEY,  
Clerk.

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910.

No. 864

 247

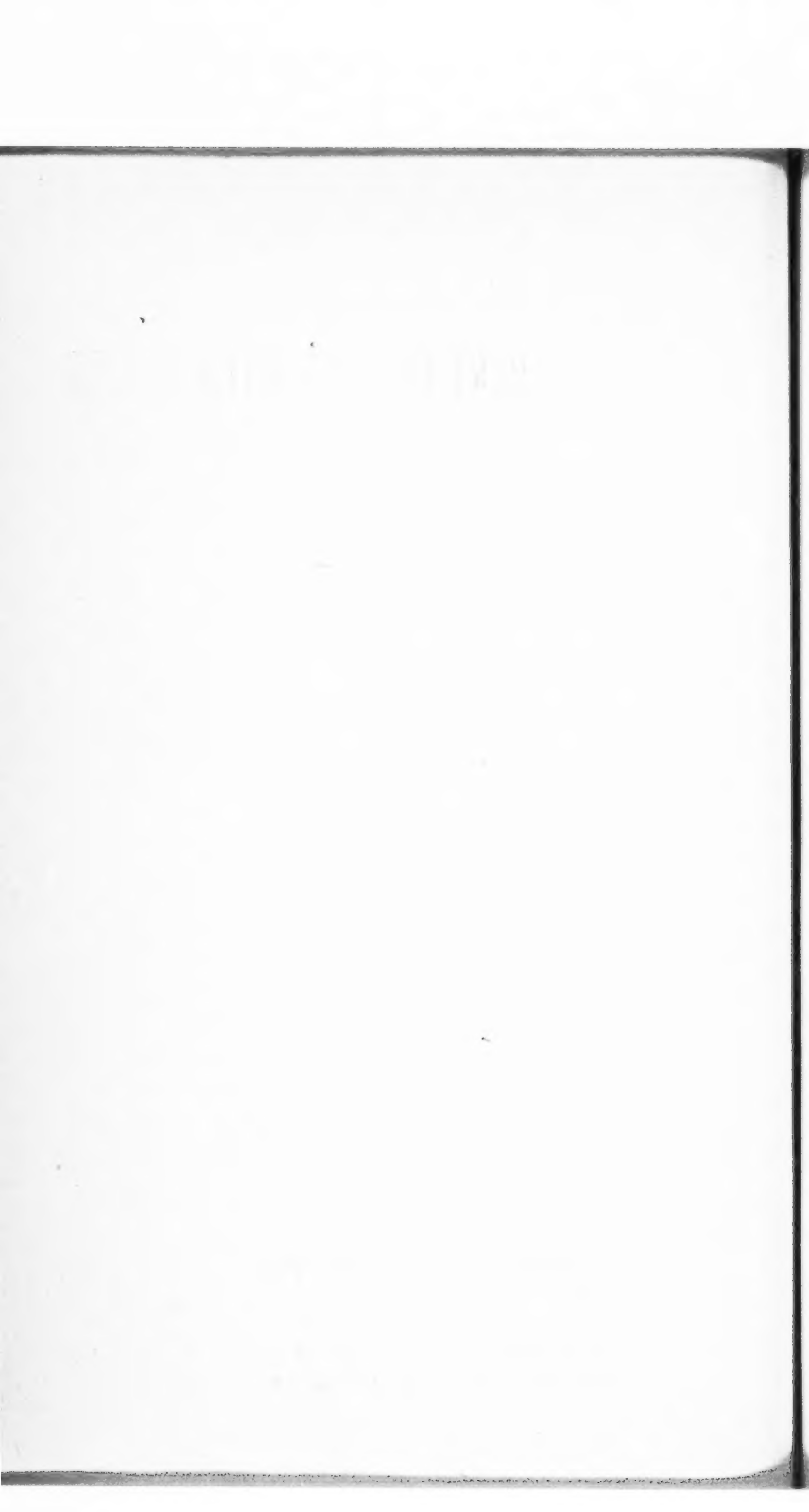
SOUTHERN PACIFIC COMPANY, - - - Plaintiff in Error.

VERSUS

THE COMMONWEALTH OF KENTUCKY, ON RELATION OF  
GEORGE H. ALEXANDER, HOLLAND L. ANDERSON, AND  
J. W. CASSADAY, Revenue Agents.

MOTION TO ADVANCE.

In Error to the Court of Appeals of the State  
of Kentucky.



# SUPREME COURT OF THE UNITED STATES

October Term, 1910.

No. 864.

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SOUTHERN PACIFIC COMPANY, - - *Plaintiff in Error,*  
*vs.*

THE COMMONWEALTH OF KENTUCKY, ON RELATION OF  
GEORGE H. ALEXANDER, HOLLAND L. ANDERSON AND J.  
W. CASSADAY, REVENUE AGENTS.

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*In Error to the Court of Appeals of the State of  
Kentucky.*

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## MOTION TO ADVANCE.

The defendant in error, Commonwealth of Kentucky, makes this its motion to advance the above-styled cause, which motion is not objected to by the plaintiff in error, Southern Pacific Company, and as grounds therefor assign the following:

The judgment appealed from (page 722 of record) is as follows:

“The court being advised, it is ordered that the petition for rehearing herein be overruled. The

mandate in this case is, however, extended so that it will read as follows:

“ ‘The court being advised, it is considered that the judgment appealed from be and it is hereby reversed, with directions to the lower court to enter a judgment assessing the Southern Pacific Company on its steamships Chalmette, Excelsior, El Dorado, El Paso, El Monte, El Mar, El Sud, El Rio, El Cid, Comus, Proteus, El Valle, El Dia, El Siglo, Il Albra, El Amigo, having a situs in the Commonwealth of Kentucky as of September 1, 1906, at a valuation of \$4,828,180.41, and the steamships above named, and in addition thereto the steamers Momus, Antilles and Creole, as of September 1, 1907, at \$7,682,344.42; and to enter a judgment based on these assessments, for the State and county, at the rates fixed by law; for the year 1907 at 50 cents for the State and 32 cents for the county of Jefferson, each on the one hundred dollars; and for the year 1908, for the State, at the rate of 50 cents, and for Jefferson County at the rate of 26 cents, in each case on the one hundred dollars; and a penalty of 20 per cent on each amount, such penalty to be paid as set forth in the judgment of the Jefferson County Court rendered herein on November 18, 1908, at page 380 of the printed record.

“ ‘In all other respects the judgment of the lower court is affirmed.’

“ ‘This order is entered upon the agreement of counsel that the value of the property assessed is as above set out, the court being of opinion from the record that it is correct, and that a final judgment should now be entered.’ ”

Since the entry of this judgment the County Board of Supervisors has each year assessed the steamships of the Southern Pacific Company at twelve million dollars. The assessed valuation of personal property in

Jefferson County, including this sum, was \$56,945,375.00. The Fiscal Court of Jefferson County fixes the tax rate of the county proportionate to the revenue needed and the property assessed. The rate fixed includes an assessment of this property, which assessment plaintiff in error declines to pay until this case is determined. The State Board of Equalization takes this assessment into consideration in fixing the value of property for State taxes. If this property is liable, all the other citizens of Jefferson County are bearing by increased tax rate the burden of the failure of the company to pay the tax. If it is not liable, each year the tax rate is made less than it should be, because the tax rate is fixed on the assumption that it is liable, and the State and county will be proportionately embarrassed.

It is a public question involving State and county revenue, not only for the years involved in this litigation, but for subsequent years, until the determination of this question.

#### THE MATTERS INVOLVED.

It is the contention of defendant in error that the taxable situs of ocean going steamships plying between New York and New Orleans, New York and Galveston, and New Orleans and Havana, is at the domicile of their owner, and not at the port of enrollment, registration or license, and these steamships have never been assessed for taxation in any other jurisdiction.

Does the fact that plaintiff in error operates a line of steamships, controls by stock ownership the policy of 9,459 miles of railroad and gives as a common carrier a bill of lading from New York to San Francisco so modify the general tax law as to give to its intangible and steamship property a taxation situs different from that it would have as the property of a natural person, *i. e.*, at the residence of the owner?

Do its franchises "to do," granted by other States and exercised wholly in other States, exempt it from taxation as a natural person or place it among that class of persons assessed for a franchise tax by the State Board of Valuation and Assessment?

The State Board of Valuation and Assessment cannot constitutionally assess the property of the Southern Pacific Company under Section 5, Art. IV, Chapter 22 of the Acts of 1906, which provides in part:

"If any such railroad or other corporation organized under the laws of this State have all of its lines outside of this State, the said board shall fix the value of its entire capital stock as hereinbefore provided, and apportion to this State for taxation therein the proper proportion and not less than one per cent of its said capital stock, and the amount so apportioned shall be the value of its intangible property, including its corporate franchise, stocks, bonds, securities, and choses in action, subject to taxation in this State and in the county, city, town, and district where its principal place of business in this State may be located."

Such a tax can not be assessed by the State Board on the mileage basis because the plaintiff in error has no

mileage in Kentucky; nor on the earnings basis because it earns nothing in Kentucky and this State can not tax the earnings made in other States; nor by deducting the tangible property from "the capital stock." There is no tangible property, the capital stock is worth \$400,000,000.

Plaintiff in error states the board assessed it by taking one per cent of the *par value* of the capital stock. Such a manner of assessment is unauthorized, is not tenable nor one of the three rules fixed by the statute to arrive at the proper proportion.

If a holding company the board has no jurisdictional right to assess, because such companies are not liable to a franchise tax. If a railroad company the assessment is *pro tanto* illegal and void, because the said act releases or exempts from assessment property, tangible, and intangible, having a taxable situs in this State.

All the business of plaintiff in error being done beyond this State, it is not liable to a franchise tax. This State can only impose an *ad valorem* tax on plaintiff in error as a citizen thereof.

The only assessment against the Southern Pacific Company for State and county purposes for the years herein involved, were as follows:

For the year 1907 the property of the Southern Pacific Company was not assessed in Kentucky otherwise than by the State Board of Valuation and Assessment.

For the year 1908 the property of the Southern Pacific Company was not assessed in Kentucky other than by the State Board of Valuation and Assessment, and by

the Board of Supervisors of Jefferson County, Kentucky. The latter board assessed \$10,000,000.00 of bonds against the Southern Pacific Company.

The value of the intangible property of plaintiff in error consisting of stocks and bonds for 1907 was \$144,559,259.77, and for 1908 was \$157,758,419.13. (Rec. p. 207), yet the only assessment made against the company at its domicile was that of the State Board of Valuation and Assessment for 1907 and 1908 was \$2,374,189.00 each year. (Rec. p. 63.)

The premises considered it is respectfully urged that this motion to advance be granted.

COMMONWEALTH OF KENTUCKY, BY ETC.,  
By Matt J. Holt,  
*Attorney.*

While plaintiff in error does not agree with counsel for defendant in error as to the matters involved, it being their contention that the only issue presented by the record is the situs for taxation of their ocean going steamships, they do not object to an advancement of the case and hereby enter their appearance to the motion.

ALEX. POPE HUMPHREY,  
*Of Counsel for Plaintiff in Error.*



**SOUTHERN PACIFIC CO. *v.* COMMONWEALTH  
OF KENTUCKY.**

**ERROR TO THE COURT OF APPEALS OF THE STATE OF  
KENTUCKY.**

No. 247. Argued October 11, 12, 1911.—Decided November 13, 1911.

An artificial situs for purposes of taxation is not acquired by the enrollment of a vessel at a port or the marking of that port on the stern, under §§ 4141 and 4178, Rev. Stat., as amended by the act of June 23, 1874, 18 Stat. 252, c. 467.

The taxable situs of a vessel which has no permanent location within

another jurisdiction is the domicile of the owner. *Ayer & Lord Tie Co. v. Kentucky*, 202 U. S. 409, followed, and *Old Dominion Steamship Co. v. Virginia*, 198 U. S. 299, distinguished.

A vessel is built to navigate the seas and not to stay in port and it does not acquire a situs in one port rather than another by reason of frequently visiting the former. *Hays v. Pacific Mail Steamship Co.*, 17 How. 596.

Although equality of burdens be the general standard sought to be obtained in taxation, the legality of the tax is not to be measured by the benefit received by the taxpayer, nor are protection and taxation necessarily correlative obligations.

The taxing power can only be interfered with on the grounds of unjustness where the abuse is flagrant and can be remedied by some affirmative principle of constitutional law.

A corporation organized under the law of a State and having its general office and holding its corporate meetings therein, receives such protection from that State as affords a basis for taxing its intangible property which has not acquired a situs for taxation elsewhere.

The taxable situs of a vessel not permanently located within another jurisdiction does not depend upon whether the State which is the domicile of the owner possesses a port which such vessel could reach. Such a test would introduce elements of uncertainty dependent upon draft of the vessel and depth of the water.

Vessels engaged in coastwise trade belonging to a Kentucky corporation held to be taxable in Kentucky although enrolled in the port of New York, having the name of New York painted on their sterns and never were at any port in Kentucky.

134 Kentucky, 417, affirmed.

THE facts, which involve the power of the State of Kentucky to tax steamships belonging to a corporation of that State but enrolled at the port of New York, are stated in the opinion.

*Mr. Alexander Pope Humphrey and Mr. Maxwell Evarts* for plaintiff in error:

Kentucky is the artificial situs of the ships of the Southern Pacific Company, New York their actual situs. They are therefore not rightfully subject to taxation in Kentucky.

Taxation is imposed by a State in return for protection

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Argument for Plaintiff in Error.

given. Unless a State gives some return for a tax imposed there is no ground for the tax.

To tax personal property where it has no situs is to take property without due process of law, and is prohibited by the Fourteenth Amendment.

As to real estate it was never doubted that the taxing laws of a State could have no extraterritorial force. It has now come to be settled law that the same is true as to personal property. *Louisville & Jeffersonville Ferry Co. v. Kentucky*, 188 U. S. 385; *D., L. & W. R. R. Co. v. Pennsylvania*, 198 U. S. 342; *Union Transit Co. v. Kentucky*, 199 U. S. 195.

Six cases have been decided by this court in reference to the taxation of ships. *Hays v. Pacific Mail S. S. Co.*, 17 How. 596; *St. Louis v. The Ferry Co.*, 11 Wall. 423; *Morgan v. Parham*, 16 Wall. 471; *Transportation Co. v. Wheeling*, 99 U. S. 273; *Old Dominion S. S. Co. v. Virginia*, 198 U. S. 299; *Ayer & Lord Co. v. Kentucky*, 202 U. S. 409.

This court having held that the protection given by the taxing sovereignty to the thing taxed is the true basis of taxation, and that this principle should be applied in the case of personal property, as well as to real estate, it is not plain why ships alone of all personal property should be excepted from the rule.

The Court of Appeals of Kentucky declined to hold that the State which furnished protection to the thing taxed alone had the right of taxation, upon the ground that it was prevented from so doing by the decisions of this court in reference to the taxation of ships.

The decisions cited do not so hold. There is no case decided by this court which holds that a ship in the coastwise trade can be taxed by an inland State within whose jurisdiction it is a physical impossibility for it ever to come. Further than that, in its later decisions this court has favored the rule of reason and common sense, viz., that ships should not be taxed in the artificial situs

of the domicile of the owner, but in their actual situs—where they receive the protection of the taxing power.

In every case in this court where the principle that the domicile of the owner was to be regarded as the situs of the vessel for the purpose of taxation, it was always a domicile where it was physically possible for that ship to be, and not a domicile where under no circumstances the taxing power could have the ship within its jurisdiction.

The question is: Are these ships to be taxed in a State which does, and can give them, no protection or in a State which can and does do so—in a State where the fiction of the law as to personalty following the owner's domicile must be extended to an extreme, or in one where they have an actual situs, so far as possible for ships engaged in coastwise trade to have a situs, and pay a tax to that State which does something for them in return?

*Mr. Matt J. Holt*, with whom *Mr. Joseph Selligman* was on the brief, for defendant in error.

MR. JUSTICE LURTON delivered the opinion of the court.

The question arising upon this writ of error is, whether certain steamships owned by the Southern Pacific Company, a corporation of the State of Kentucky, are taxable in Kentucky as property having a taxable situs there.

The Southern Pacific Company is a corporation organized under a special act of the General Assembly of Kentucky of March 17, 1884. Acts of 1883-4, p. 725. Very wide and diverse powers are thereby conferred, among them being the right to own, lease, maintain and operate railroads, telegraphs and steamships, though prohibited from owning, leasing or operating "any railroad within the State of Kentucky." By an act of March 21, 1888, the act of March 17, 1884, was amended by adding thereto the following: "Except subject to and in conformity with the provisions of the laws of the State of Kentucky applicable

to railroads, and acquiring no special rights that may be possessed by any railroads in the State, except the general and ordinary rights of common carriers as possessed by railroads generally." The company is required to keep its principal office in the State, with power to open other offices at places outside of the State, as its business may make convenient.

By virtue of the authority conferred the company has acquired and is operating a line of railway from New Orleans and Galveston to San Francisco and Portland, to say nothing of connecting lines in the same region either owned, leased or controlled through stock domination. It also owns and operates a line of twenty steamships between the ports of New York and New Orleans, New York and Galveston, and New Orleans and Havana, Cuba. Auxiliary to these ships it also owns barges, tugs and ferry-boats, which operate exclusively in the harbors of the ports mentioned. These tugs, barges, etc., were held to have acquired a permanent situs in such ports, under the ruling in *Old Dominion Steamship Co. v. Virginia*, 198 U. S. 299, and in this the State of Kentucky acquiesced, leaving open only the question of the taxable situs of the ocean-going steamships.

All of these ships are enrolled at the port of New York and carry on their sterns the words "New York," as required by the statute. Two of them sail between New Orleans and Havana, five between New York and New Orleans exclusively, and thirteen interchangeably between New York and New Orleans, and New York and Galveston, Texas. The enrollment at New York and the marking of the name of that port upon the stern of these vessels is only of importance upon the question of an actual situs at New York. The owner has no power to give his vessel a taxable situs by the arbitrary selection of a home port, which is neither his domicile, nor the domicile of actual situs. *St. Louis v. Ferry Co.*, 11 Wall. 423;

*Old Dominion Steamship Co. v. Virginia*, 198 U. S. 299;  
*Ayer & Lord Tie Co. v. Kentucky*, 202 U. S. 409.

Sections 4141 and 4178, Revised Statutes, as amended by the act of June 23, 1874, 18 Stat. 252, c. 467, give to an owner the right to mark upon the stern of his vessel either the name of the place of enrollment, the place where the vessel was built, or the place where the owner resides.

As the place of enrollment is not of itself determinative of the place of taxation, it is obvious that the right to select a place to be marked upon the stern as a place of hail or home port, does not confer the arbitrary right upon the owner of selecting a place for the taxation of his vessel. To give to the statute this construction, said this court in *Ayer & Lord Tie Co. v. Kentucky*, cited above (p. 426), "would be simply to hold that its purpose was to endow the owner with the faculty of arbitrarily selecting a place for the taxation of his vessel in defiance of the law of domicile and in disregard of the principle of actual situs."

Since, therefore, an artificial situs for purposes of taxation is not acquired by enrollment nor by the marking of a name upon the stern, the taxable situs must be that of the domicile of the owner, since that is the situs assigned to tangibles where an actual situs has not been acquired elsewhere. The ancient maxim which assigns to tangibles, as well as intangibles, the situs of the owner for purposes of taxation has its foundation in the protection which the owner receives from the government of his residence, and the exception to the principle is based upon the theory that if the owner, by his own act, gives to such property a permanent location elsewhere, the situs of the domicile must yield to the actual situs and resulting dominion of another government. Thus in *St. Louis v. Ferry Co.*, 11 Wallace, 423, 430, this court, after referring to the taxing power of a State as extending to all persons and property within its territorial jurisdiction, said:

"In the eye of the law personal property, for most purposes, has no locality. . . . In a qualified sense it accompanies the owner wherever he goes, and he may deal with it and dispose of it according to the law of his domicile. If he die intestate, that law, wheresoever the property may be situate, governs its disposal, and fixes the rights and shares of the several distributees. But this doctrine is not allowed to stand in the way of the taxing power in the locality where the property has its actual *situs*, and the requisite legislative jurisdiction exists. Such property is undoubtedly liable to taxation there in all respects as if the proprietor were a resident of the same locality. The personal property of a resident at the place of his residence is liable to taxation, although he has no intention to become domiciled there. Whether the personal property of a resident of one State situate in another can be taxed in the former, is a question which in this case we are not called upon to decide."

The question thus reserved was decided adversely to the State of domicile in *Union Transit Co. v. Kentucky*, 199 U. S. 194.

The persistence with which this court has declared and enforced the rule of taxability at the domicile of the owner of vessel property, when it did not appear that the vessels had an actual *situs* elsewhere, is illustrated by the cases of *Hays v. Pacific Mail Steamship Company*, 17 Howard, 596; *Morgan v. Parham*, 16 Wallace, 471; *St. Louis v. Ferry Co.*, 11 Wallace, 423; *Old Dominion Steamship Co. v. Virginia*, 198 U. S. 299, and the case of *Ayer & Lord Tie Co. v. Kentucky*, 202 U. S. 409.

In *Hays v. Pacific Mail Steamship Company* it appeared that the ships of the company were the property of a New York corporation, and that they were registered at the port of New York, where the capital represented by them was assessed for taxation. They were regularly and continuously employed on the Pacific coast, and were re-

fitted and repaired from time to time at Benicia, in the State of California. Concerning these ships, which the State of California sought to tax upon the theory that they had an actual situs in that State, this court said (p. 598):

"These ships are engaged in the transportation of passengers, merchandise, &c., between the city of New York and San Francisco, by the way of Panama, and between San Francisco and different ports in the territory of Oregon. They are thus engaged in the business and commerce of the country, upon the highway of nations, touching at such ports and places as these great interests demand, and which hold out to the owners sufficient inducements by the profits realized or expected to be realized. And so far as respects the ports and harbors within the United States, they are entered and cargoes discharged or laden on board, independently of any control over them, except as it respects such municipal and sanitary regulations of the local authorities as are not inconsistent with the Constitution and laws of the General Government, to which belongs the regulation of commerce with foreign nations and between the States.

"Now, it is quite apparent that if the State of California possessed the authority to impose the tax in question, any other State in the Union, into the ports of which the vessels entered in the prosecution of their trade and business, might also impose a like tax. It may be that the course of trade or other circumstances might not occasion as great a delay in other ports on the Pacific as at the port of San Francisco. But this is a matter accidental, depending upon the amount of business to be transacted at the particular port, the nature of it, necessary repairs, &c., which in no respect can affect the question as to the *situs* of the property, in view of the right of taxation by the State.

"Besides, whether the vessel, leaving her home port for trade and commerce, visits, in the course of her voyage

or business, several ports, or confines her operations in the carrying trade to one, are questions that will depend upon the profitable returns of the business, and will furnish no more evidence that she has become a part of the personal property within the State, and liable to taxation at one port than at the others. She is within the jurisdiction of all or any one of them, temporarily, and for a purpose wholly excluding the idea of permanently abiding in the State, or changing her home port."

In *St. Louis v. Ferry Co.*, cited above, the steamboats in question were owned by an Illinois corporation, which had its principal office within that State. They were enrolled at the port of St. Louis, where the principal officers of the company resided, and where an office was maintained, in which the corporate meetings were held and where the corporate seal was kept. That they were enrolled at St. Louis, the court said, "throws no light upon the subject of our inquiry. . . . The solution of the question, where her home port is, when it arises, depends wholly upon the locality of her owner's residence, and not upon the place of her enrollment." The steamers were taxed in Illinois, and were held not subject to taxation in St. Louis. Upon this subject the court said (p. 431):

"The owner was, in the eye of the law, a citizen of that State, and from the inherent law of its nature could not emigrate or become a citizen elsewhere. As the boats were laid up on the Illinois shore when not in use, and the pilots and engineers who ran them lived there, that locality, under the circumstances, must be taken to be their home port. They did not so abide within the city as to become incorporated with and form a part of its personal property. Hence they were beyond the jurisdiction of the authorities by which the taxes were assessed, and the validity of the taxes cannot be maintained."

In *Morgan v. Parham*, the vessel was owned and registered in New York, but enrolled as a coaster at Mobile,

where her master resided and where there was an office and agent under the control of a superior agent residing at New Orleans, who employed and paid the other officers and men of the ships. There was also a wharf at Mobile controlled and occupied by the vessels of the line. The vessels were engaged in commerce between Mobile and New Orleans and had been so continuously for several years. The court held that "the State of Alabama had no jurisdiction over the vessels for the purpose of taxation, for the reason that they had not become incorporated into the personal property of that State, but were there temporarily only, and that they were engaged in lawful commerce between the States with their situs at the home port of New York, where they belonged and where their owners were liable to be taxed for their value.

The case of *The Old Dominion Steamship Company v. Virginia*, affords an instance of where the domicile of the owner as a taxing situs was held to have been lost and a new taxing situs acquired by reason of a permanent location within another jurisdiction. But in that case the judgment was rested upon the fact that the vessels had for years been continuously and exclusively engaged in the navigation of the Virginia waters, which State had thereby acquired jurisdiction for imposing a tax as upon property which had become incorporated into the tangible property within her territory.

Coming now to the last utterance of this court, the case of *Ayer & Lord Tie Company v. Kentucky*, we find a complete authority for upholding the assessability of these steamers by the State of Kentucky. The boats there in question were engaged in interstate commerce between the ports of Kentucky, Illinois, Mississippi, Tennessee and Arkansas. They were owned by an Illinois corporation which had its principal office at Chicago, where taxes had been paid under the laws of the State, both to the State and to the city. Brookfield, in the extreme south-

law guaranteed under that Amendment. The question for decision in that case, as stated in the forepart of the opinion (p. 201), was, "whether a corporation organized under the laws of Kentucky is subject to taxation upon its tangible personal property, *permanently located in other States* and employed there in the prosecution of its business." The property in question was railroad cars, a kind of movables obviously capable of acquiring a permanent location other than that of the owner. The judgment of the court was that the taxation of such property so *permanently located* elsewhere by the law of the domicile of the owner would be a denial of due process of law and beyond the power of the State. The principle was not a new one, and was declared to rest upon repeated judgments of this court, the cases of *Railroad Co. v. Jackson*, 7 Wallace, 262; *Delaware &c. Railroad v. Pennsylvania*, 198 U. S. 341; *Louisville &c. Ferry Co. v. Kentucky*, 188 U. S. 385, being cited as precedents. That judgment did not deny to the State of the domicile of the owner power to tax tangibles which had not acquired an actual situs elsewhere.

The case presented no such question and the opinion does not refer to the numerous cases holding that the taxable situs of ships engaged in foreign or interstate commerce was that of the owner unless an actual situs had been elsewhere acquired. That no such consequence was attached to the judgment or opinion is evidenced from the opinion in *Ayer & Lord Tie Company v. Kentucky*, announced at the same term and concurred in by Mr. Justice Brown, who wrote the opinion in the *Transit Company* case, in which case it was distinctly affirmed that vessels were subject to taxation only at the domicile of the owner, unless they had acquired an actual situs in another jurisdiction.

To lay down a principle that vessel property has no situs for purposes of taxation other than that of actual permanent location, would introduce elements of uncertainty

concerning the situs of such property not presented by other kinds of movable property.

It is one thing to find that a movable, such as a railway car, a stock of merchandise, or a herd of cattle, has become a part of the permanent mass of property in a particular State, and quite another to attribute to a sea-going ship an actual situs at any particular port into which it goes for supplies or repairs or for the purpose of taking on or discharging cargo or passengers. A ship is not intended to stay in port, but to navigate the seas. Its stay in port is a mere incident of its voyage, and to determine that it has acquired an actual situs in one port rather than another would involve such grave uncertainty as to result often in an entire escape from taxation. This court, in *Hays v. Pacific Mail Steamship Co.*, *supra*, said upon this subject (p. 599), "whether the vessel, leaving her home port for trade and commerce, visits, in the course of her voyage or business, several ports, or confines her operations in the carrying trade to one, are questions that will depend upon the profitable returns of the business, and will furnish no more evidence that she has become a part of the personal property within the State, and liable to taxation at one port than at the others. She is within the jurisdiction of all or any one of them temporarily, and for a purpose wholly excluding the idea of permanently abiding in the State, or changing her home port."

In *People ex rel. Pacific Mail Steamship Company v. Commissioners of Taxes*, 58 N. Y. 242, 246, the New York court said, concerning the necessity of determining the taxable situs of such ships by some more certain standard than by the ports they make and the time they remain, that, "being in port is only a necessary incident in their proper employment. They are not built to be in port, but upon the sea. To determine their *situs*, for purposes of taxation, by their longer or shorter stay in a particular port, or by their more or less frequent resort to it, would intro-

duce perpetual uncertainty; it would, practically, subject them to taxation in every port, or exempt them in all."

The difficulties attendant upon the taxation of intangible property elsewhere than at the domicile of the owner have largely preserved the domicile of the owner as the proper situs for purposes of taxation.

The legality of a tax is not to be measured by the benefit received by the taxpayer, although equality of burdens be the general standard sought to be attained. Protection and taxation are not necessarily correlative obligations, nor precise equality of burden attainable, however desirable. The taxing power is one which may be interfered with upon grounds of unjustness only when there has been such flagrant abuse as may be remedied by some affirmative principle of constitutional law.

Take the case in hand. The Southern Pacific Company is a corporation having much extraordinary power. It only exists and exercises this power by virtue of the law of Kentucky. By the law of its being it resides in Kentucky and there maintains its general office and there holds its corporate meetings. To say that the protection which the corporation receives from the State of its origin and domicile affords no basis for imposing taxes upon tangibles which have not acquired an actual situs under some other jurisdiction is not supportable upon grounds of either abstract justice or concrete law. What is the protection accorded these vessels at any of the ports to which they temporarily go for purposes of business? What protection do they receive from the State or city of New York other than that accorded to every other ship which visits that port, foreign or domestic, for repairs, supplies or other business? Referring to a like claim of protection this court, in *Hays v. Pacific Mail Steamship Co.*, 17 Howard, 596, 599, said: "And so far as respects the ports and harbors within the United States, they are entered and cargoes discharged or laden on board, independently of

any control over them, except as it respects such municipal and sanitary regulations of the local authorities as are not inconsistent with the Constitution and laws of the General Government, to which belongs the regulation of commerce with foreign nations and between the States."

It has also been urged that the situs of the domicile of the owner of a ship cannot be the situs for purposes of taxation when it appears that the ship cannot go to that situs, and it is here said that the ships of the Southern Pacific Company cannot visit any port in the State of Kentucky. The fact is not shown, nor is it conceded. The State has a port on the Mississippi, a great stream, up which national ships of war have at times gone as high or higher than the southern boundary of the State of Kentucky. But the test proposed is not one for which there is any authority, and would but introduce another grave element of uncertainty dependent upon the draught of the ships and the depth of the water. Such a test might exclude from taxation ships, such great ships as the Olympic, or the Lusitania, while smaller craft might meet the proposed standard.

The facts which have been relied upon to show an actual situs of these ships in the port of New York have been already sufficiently stated. They fall short of the facts relied upon for a like purpose in *Hays v. Pacific Mail Steamship Company*; *St. Louis v. Ferry Co.*, and *Morgan v. Parham*, already cited, where the judgments were that they were insufficient to create a taxable situs other than that of the owner. The facts shown by no means bring the case under the authority of *Old Dominion Steamship Company v. Virginia*, where it was held that the ships had acquired an actual situs.

We find no reason for disturbing the judgment of the Court of Appeals of the Commonwealth of Kentucky, and it is therefore,

*Affirmed.*